



भारत का राजपत्र

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No. 12]

NEW DELHI, MARCH 17—MARCH 23, 2019, SATURDAY/ PHALGUNA 26, 1940— CHAITRA 2, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिसमें कि यह पृथक संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 1 मार्च, 2019

का.आ. 391.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खंड (3) के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 9 की उप-धारा (3) के खंड (ज) और उप-धारा (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री अमित चटर्जी (जन्म तिथि: 25.10.1954) को इस अधिसूचना की तारीख से एक वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, यूको बैंक के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के पद पर पुनः नामित करती है।

[फा. सं. 6/1/2018-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 1st March, 2019

S.O. 391.—In exercise of the powers conferred by clause (h) of sub-section (3) and sub-section (3-A) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) read with sub-clause (1) of clause (3) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, Central Government hereby re-nominates Shri Amit Chatterjee (DoB: 25.10.1954) as part-time non-official director on the Board of Directors of UCO Bank, for a period of one year from the date of this notification, or until further orders, whichever is earlier.

[F. No. 6/1/2018-BO-I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 1 मार्च, 2019

का.आ. 392.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खंड (3) के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपकरणों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 9 की उप-धारा (3) के खंड (ज) और उप-धारा (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, डॉ. अर्चना रविन्द्रराय ढोलकिया (जन्म तिथि: 4.12.1955) को इस अधिसूचना की तारीख से एक वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, बैंक आफ महाराष्ट्र के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के पद पर पुनः नामित करती है।

[फा. सं. 6/1/2018-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 1st March, 2019

S.O. 392.—In exercise of the powers conferred by clause (h) of sub-section (3) and sub-section (3-A) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) read with sub-clause (1) of clause (3) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, Central Government hereby re-nominates Dr Archana Ravindrarai Dholakia (DoB: 4.12.1955) as part-time non-official director on the Board of Directors of Bank of Maharashtra, for a period of one year from the date of this notification, or until further orders, whichever is earlier.

[F. No. 6/1/2018-BO-I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 1 मार्च, 2019

का.आ. 393.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खंड (3) के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपकरणों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 9 की उप-धारा (3) के खंड (ज) और उप-धारा (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, प्रो. (डॉ.) राधा आर. शर्मा (जन्म तिथि: 20.9.1955) को इस अधिसूचना की तारीख से एक वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, इलाहाबाद बैंक के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के पद पर पुनः नामित करती है।

[फा. सं. 6/1/2018-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 1st March, 2019

S.O. 393.—In exercise of the powers conferred by clause (h) of sub-section (3) and sub-section (3-A) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) read with sub-clause (1) of clause (3) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, Central Government hereby re-nominates Prof. (Dr) Radha R. Sharma (DoB: 20.9.1955) as part-time non-official director on the Board of Directors of Allahabad Bank, for a period of one year from the date of this notification, or until further orders, whichever is earlier.

[F. No. 6/1/2018-BO-I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 1 मार्च, 2019

का.आ. 394.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खंड (3) के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 9 की उप-धारा (3) के खंड (ज) और उप-धारा (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री एम. भगवंत राव (जन्म तिथि: 25.5.1954) को इस अधिसूचना की तारीख से एक वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, कार्पोरेशन बैंक के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के पद पर पुनः नामित करती है।

[फा. सं. 6/1/2018-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 1st March, 2019

S.O. 394.—In exercise of the powers conferred by clause (h) of sub-section (3) and sub-section (3-A) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) read with sub-clause (1) of clause (3) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1980, Central Government hereby re-nominates Shri M. Bhagavantha Rao (DoB: 25.5.1954) as part-time non-official director on the Board of Directors of Corporation Bank, for a period of one year from the date of this notification, or until further orders, whichever is earlier.

[F. No. 6/1/2018-BO-I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 1 मार्च, 2019

का.आ. 395.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (ज) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, डॉ. हसमुख अद्धिया (जन्म तिथि: 3.11.1958) को इस अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, बैंक आफ बडौदा के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के साथ-साथ गैर-कार्यकारी अध्यक्ष के पद पर नियुक्त करती है।

[फा. सं. 4/1/2019-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 1st March, 2019

S.O. 395.—In exercise of the powers conferred by clause (h) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby appoints Dr Hasmukh Adhia (DoB: 3.11.1958) as part-time non-official director as well as Non-executive Chairman on the Board of Bank of Baroda, for a period of three years from the date of this notification, or until further orders, whichever is earlier.

[F. No. 4/1/2019-BO-I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 8 मार्च, 2019

का.आ. 396.—निक्षेप बीमा और प्रत्यय गारंटी निगम अधिनियम, 1961 (1961 का 47) की धारा 6 की उप-धारा 2 के खंड (ii) के साथ पठित धारा 6 की उपधारा (1) के खण्ड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, राष्ट्रीय कृषि और ग्रामीण विकास बैंक (नावार्ड) के अध्यक्ष श्री हर्ष कुमार भानवाला को अधिसूचना की तारीख से 17.12.2019 तक अथवा अगले आदेशों तक, जो भी पहले हो, निक्षेप बीमा और प्रत्यय गारंटी निगम (डीआईसीजीसी) के निदेशक मण्डल में निदेशक के पद पर पुनः नामित करती है।

[फा. सं. 6/13/2012-बीओ-I]

एस. आर. मेहर, उप सचिव

New Delhi, the 8th March, 2019

S.O. 396.—In exercise of the powers conferred by clause (d) of sub-section (1) of section 6 read with clause (ii) of sub-section (2) of section 6 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), the Central Government hereby re-nominates Shri Harsh Kumar Bhanwala, Chairman, National Bank for Agriculture and Rural Development as Director on the Board of Directors of Deposit Insurance and Credit Guarantee Corporation from the date of this notification and up to 17.12.2019 or until further orders, whichever is earlier.

[F. No. 6/13/2012-BO-I]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 10 मार्च, 2019

का.आ. 397.—बीमा विनियामक और विकास प्राधिकरण अधिनियम, 1999 (1999 का 41) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार, एतद्वारा, एंग्रीकल्चर इंश्योरेंस कंपनी आफ इंडिया लिमिटेड की अध्यक्ष-सह-प्रबंध निदेशक सुश्री टी. एल. अलामेलु को उनके पदभार ग्रहण करने की तारीख से 3 वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, चार लाख रुपए प्रति माह (कार तथा आवास की सुविधा के बिना) के नियत वेतन पैकेज पर भारतीय बीमा विनियामक और विकास प्राधिकरण (आईआरडीएआई) के पूर्णकालिक सदस्य (गैर-जीवन) के रूप में नियुक्त करती है।

[फा. सं. आर-16011/02/2012-बीमा-I]

मृत्युंजय सिंह, अवर सचिव

New Delhi, the 10th March, 2019

S.O. 397.—In exercise of the powers conferred by Section 4 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), the Central Government hereby appoints Ms. T. L. Alamelu, Chairman-cum-Managing Director, Agriculture Insurance Company of India Limited, as Whole-Time Member (Non-Life) in the Insurance Regulatory and Development Authority of India with a fixed pay package of Rupees Four Lakh per month (without facility of house and car) for a period of three years with effect from the date of assumption of charge of the post or until further orders, whichever is earlier.

[F. No. R-16011/02/2012-Ins.I]

MRITUNJAY SINGH, Under Secy.

भारी उद्योग और लोक उद्यम मंत्रालय (भारी उद्योग विभाग)

नई दिल्ली, 11 मार्च, 2019

का.आ. 398.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथा संशोधित 1987, 2007 और 2011) के नियम 10 के उप-नियम (4) के अनुसरण में, भारी उद्योग और लोक उद्यम मंत्रालय, भारी उद्योग विभाग के प्रशासनिक नियंत्रणाधीन लोक उद्यम, “भारत हेवी इलेक्ट्रिकल्स लिमिटेड, सीएफपी, रुद्रपुर”, जिसके 80% से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है।

[सं. ई-11012/2/2018-हिन्दी]

प्रवीण एल. अग्रवाल, संयुक्त सचिव

MINISTRY OF HEAVY INDUSTRIES AND PUBLIC ENTERPRISES**(Department of Heavy Industry)**New Delhi, the 11th March, 2019

S.O. 398.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended in 1987, 2007 and 2011), the Central Government hereby notifies the “Bharat Heavy Electricals Limited, CFP, Rudrapur” under the administrative control of the Ministry of Heavy Industry & Public Enterprises, Department of Heavy Industry, wherein more than 80% staff have acquired the working knowledge of Hindi.

[No. E-11012/2018-Hindi]

PRAVIN L. AGRAWAL, Jt. Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 15 मार्च, 2019

का.आ. 399.—केंद्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसार में प्रसार भारती, दूरदर्शन महानिदेशालय (सूचना और प्रसारण मंत्रालय) के निम्नलिखित अधीनस्थ कार्यालय, जिनके 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है:-

दूरदर्शन, उच्च शक्ति प्रेषित्र, जैसलमेर

दूरदर्शन, उच्च शक्ति प्रेषित्र, पीतमपुरा, दिल्ली

[फा. सं. ई-11017/10/2017-हिंदी]

डॉ. माधुरी गुप्ता, संयुक्त निदेशक (राजभाषा)

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 15th March, 2019

S.O. 399.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office under Prasar Bharti, Directorate General, Doordarshan (Ministry of Information and Broadcasting) whereof more than 80% of the staff have acquired the working knowledge of Hindi:-

Doordarshan, HPT, Jaisalmer

Doordarshan, HPT, Pitampura, Delhi

[F. No. E-11017/10/2017-Hindi]

DR. MADHURI GUPTA, Jt. Director (O.L.)

पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय

नई दिल्ली, 11 फरवरी, 2019

का.आ. 400.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि तमिलनाडू राज्य के सेलम को केरल राज्य में भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड की कोच्चि रिफाइनरी से तरलीकृत पेट्रोलियम गैस के परिवहन के लिए, एक पाइपलाइन कोच्चि सेलम पाइपलाइन प्राइवेट लिमिटेड द्वारा बिछाई जानी चाहिए;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि में, जो इससे उपाबद्ध अनुसूची में वर्णित है, जिसमें उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50), की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिये उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री बशीरकुंजु ए, सक्षम प्राधिकारी, कोन्विं सेलम पाइप लाइन प्राइवेट लिमिटेड, करुण एकलेय तल, डार. न. बी- 2, एस एन जंक्शन, रिफाईनरी रोड, यूनियन बैंक ऑफ इंडिया के सामने, त्रिपुणिथुरा, जिला ऐरनाकुलम, केरल — 682301 को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची
राज्य: केरल जिला: ऐरनाकुलम तालुक: कण्णयन्नूर

नाम ग्राम	सर्वे नम्बर	क्षेत्रफल		
		हेक्टेयर	एरिया	प्रति वर्गमीटर
त्रिकाकरा उत्तर (खण्ड सं. 6)	151/10	0	06	64
	151/11	0	00	76
	152/2	0	06	00
	152/3	0	06	48
	153/1	0	07	50
	153/2	0	04	87
	153/3	0	06	78
	153/4	0	27	75
	154/4	0	00	16
	204/4	0	00	50
	204/10	0	06	10
	204/11	0	01	72
	105/1	0	00	28
	205/2	0	04	13
	205/3	0	05	91
	205/5	0	06	99
	205/6	0	05	71
	205/7	0	00	60
	206/1	0	05	30
	206/2	0	06	42
	206/5	0	08	90
	206/6	0	00	10
	206/7	0	00	12
	212/3	0	00	09
	212/4	0	07	27
	212/8	0	04	84
	212/9	0	01	88
	212/10	0	05	85
	212/11	0	02	95
	212/14	0	00	15
	271/pt	0	15	50

	272/1	0	16	50
	273/1	0	10	05
	273/2	0	00	60
	273/3	0	07	80
	273/4	0	00	05
	273/5	0	02	80
	273/14	0	11	30
	338/2	0	04	50
	338/3	0	09	80
	353/2	0	07	80
	353/3	0	05	80
	353/4	0	04	40
	353/7	0	02	95
	353/10	0	06	70
	363/6	0	01	40
	363/7	0	00	02
	364/3	0	04	25
	364/4	0	02	30
	364/5	0	08	90
	364/7	0	00	05
	364/8	0	02	95
	365/7	0	14	40
	366/1	0	05	05
	366/2	0	06	06
	366/3	0	00	15
	366/4	0	02	65
	366/5	0	02	80
	366/6	0	04	60
	366/7	0	01	20
	369/1	0	13	84
	369/2	0	03	20
	369/3	0	04	10
	370/2	0	00	89
	370/3	0	01	40
	370/10	0	09	90
	370/11	0	06	70
	370/17	0	00	16

	371/8	0	05	80
	371/9	0	00	60
	371/11	0	00	14
	371/13	0	00	66
	409/1	0	08	02
	409/3	0	00	45
	409/4	0	07	42
	409/5	0	02	20
	409/7	0	02	35
	409/9	0	01	10
	409/10	0	01	97
	410/2	0	01	14
	410/3	0	08	90
	411/1	0	22	00
	414	0	49	90
	417/1	0	08	10
	429/17	0	06	15
	431/14	0	23	65
	432/2	0	10	76
	432/6	0	13	50
	433/4	0	11	70
	439/8	0	24	52
	439/9	0	00	35

[फा. सं. आर-12031 / 196 / 2017-ओआर-I / ई-19746]

शान्तनु धर, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 11th February, 2019

S.O. 400.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Liquefied Petroleum Gas from Kochi Refinery of Bharat Petroleum Corporation Limited in the State of Kerala to Salem in the State of Tamil Nadu and that the a pipeline should be laid by M/S Kochi – Salem pipeline Private Ltd;

And whereas , it appears to the Central Government that for the purpose of laying such pipelines, it is necessary to acquire the right of user in the lands under which such pipelines are proposed to be laid described in the schedule annexed to this notification;

Now therefore in the exercise of powers conferred by sub section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (Central Act 50 of 1962) the Central Government hereby declares its intention to acquire the right of user therein.

Any person, interested in land described in the said schedule may, within 21 days from the date on which the copies of this notification, as published in the Gazette of India are made available to the general public, object in writing to the acquisition of the right of user therein or laying or the pipeline under the land to Sri. Basheerkunju. A, Competent

Authority, Kochi-Salem Pipeline Private Ltd, Karun Enclave 2nd floor, Door No. B2, S.N. Junction, Refinery Road, Opp: Union Bank of India, Tripunithura, Pin – 682 301.

SCHEDULE

STATE : KERALA

DISTRICT : ERNAKULAM

TALUK : KANAYANNUR

VILLAGE	SURVEY NUMBERS	AREA (APPROXIMATE)		
		HECTARES	ARES	SQ:METERS
THRIKKAKARA NORTH BLOCK NO. 6	151/10	0	06	64
	151/11	0	00	76
	152/2	0	06	00
	152/3	0	06	48
	153/1	0	07	50
	153/2	0	04	87
	153/3	0	06	78
	153/4	0	27	75
	154/4	0	00	16
	204/4	0	00	50
	204/10	0	06	10
	204/11	0	01	72
	105/1	0	00	28
	205/2	0	04	13
	205/3	0	05	91
	205/5	0	06	99
	205/6	0	05	71
	205/7	0	00	60
	206/1	0	05	30
	206/2	0	06	42
	206/5	0	08	90
	206/6	0	00	10
	206/7	0	00	12
	212/3	0	00	09
	212/4	0	07	27
	212/8	0	04	84
	212/9	0	01	88
	212/10	0	05	85
	212/11	0	02	95
	212/14	0	00	15
	271/pt	0	15	50

	272/1	0	16	50
	273/1	0	10	05
	273/2	0	00	60
	273/3	0	07	80
	273/4	0	00	05
	273/5	0	02	80
	273/14	0	11	30
	338/2	0	04	50
	338/3	0	09	80
	353/2	0	07	80
	353/3	0	05	80
	353/4	0	04	40
	353/7	0	02	95
	353/10	0	06	70
	363/6	0	01	40
	363/7	0	00	02
	364/3	0	04	25
	364/4	0	02	30
	364/5	0	08	90
	364/7	0	00	05
	364/8	0	02	95
	365/7	0	14	40
	366/1	0	05	05
	366/2	0	06	06
	366/3	0	00	15
	366/4	0	02	65
	366/5	0	02	80
	366/6	0	04	60
	366/7	0	01	20
	369/1	0	13	84
	369/2	0	03	20
	369/3	0	04	10
	370/2	0	00	89
	370/3	0	01	40
	370/10	0	09	90
	370/11	0	06	70
	370/17	0	00	16

	371/8	0	05	80
	371/9	0	00	60
	371/11	0	00	14
	371/13	0	00	66
	409/1	0	08	02
	409/3	0	00	45
	409/4	0	07	42
	409/5	0	02	20
	409/7	0	02	35
	409/9	0	01	10
	409/10	0	01	97
	410/2	0	01	14
	410/3	0	08	90
	411/1	0	22	00
	414	0	49	90
	417/1	0	08	10
	429/17	0	06	15
	431/14	0	23	65
	432/2	0	10	76
	432/6	0	13	50
	433/4	0	11	70
	439/8	0	24	52
	439/9	0	00	35

[F. No. R-12031/196/2017-OR-I/E-19746]

SANTANU DHAR, Under Secy.

नई दिल्ली, 11 फरवरी, 2019

का.आ. 401.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि तमिलनाडू राज्य के सेलम को केरल राज्य में भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड की कोच्चि रिफाइनरी से तरलीकृत पेट्रोलियम गैस के परिवहन के लिए, एक पाइपलाइन कोच्चि सेलम पाइपलाइन प्राइवेट लिमिटेड द्वारा बिछाई जानी चाहिए;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि में, जो इससे उपाबद्ध अनुसूची में वर्णित है, जिसमें उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50), की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती है, इककीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिये उसमे उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री बशीरकुंजू ए, सक्षम प्राधिकारी, कोच्चि सेलम पाइपलाइन प्राइवेट लिमिटेड, करुण एंक्लेव, द्वितीय तल, डोर नं. बी-2, एस एन जंक्शन, रिफाईनरी रोड, यूनियन बैंक ऑफ इंडिया के सामने, त्रिपुनिथुरा, जिला ऐरनाकुलम, केरल — 682301 को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

राज्य: केरल

जिला: ऐरनाकुलम

तालुक: कुन्नाथुनाडू

नाम ग्राम	सर्व नम्बर	क्षेत्रफल		
		हेक्टेयर	एरिया	प्रति वर्गमीटर
वाजकूलम (खण्ड सं. 24)	61/7	0	01	34
	61/8	0	04	27

[फा. सं. आर-12031/196/2017-ओआर-I/ई-19746]

शान्तुन धर, अवर सचिव

New Delhi, the 11th February, 2019

S.O. 401.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Liquefied Petroleum Gas from Kochi Refinery of Bharat Petroleum Corporation Limited in the State of Kerala to Salem in the State of Tamil Nadu and that a pipeline should be laid by M/S Kochi – Salem pipeline Private Ltd;

And whereas , it appears to the Central Government that for the purpose of laying such pipelines, it is necessary to acquire the right of user in the lands under which such pipelines are proposed to be laid described in the schedule annexed to this notification;

Now therefore in the exercise of powers conferred by sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (Central Act 50 of 1962) the Central Government hereby declares its intention to acquire the right of user therein.

Any person, interested in land described in the said schedule may, within 21 days from the date on which the copies of this notification, as published in the Gazette of India are made available to the general public, object in writing to the acquisition of the right of user therein or laying or the pipeline under the land to Sri. Basheerkunju. A, Competent Authority, Kochi-Salem Pipeline Private Ltd., Karun Enclave 2nd floor, Door No. B2, S.N. Junction, Refinery Road, Opp: Union Bank of India, Tripunithura, Pin – 682 301.

SCHEDULE

STATE : KERALA

DISTRICT : ERNAKULAM

TALUK : KUNNATHUNADU

VILLAGE	SURVEY NUMBERS	AREA (APPROXIMATE)		
		HECTARES	ARES	SQ: METERS
VAZHAKKULAM BLOCK. NO. 24	61/7	0	01	34
	61/8	0	04	27

[F. No. R-12031/196/2017-OR-I/E-19746]

SANTANU DHAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 11 मार्च, 2019

का.आ. 402.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कमिश्नर ऑफ कस्टम्स, एयर कार्गो एक्सपोर्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 3/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.03.2019 को प्राप्त हुआ था।

[सं. एल-11012/61/2009-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 11th March, 2019

S.O. 402.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi (Ref. No. 3/2010) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Commissioner of Customs, Air Cargo Export and their workmen, which was received by the Central Government on 05.03.2019.

[No. L-11012/61/2009-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 3/2010**Date of Passing Award- 8th February, 2019.****Between:**

Shri Mahavir Singh, ...Workman
 S/o Sh. Asha Ram,
 R/o 17/9-A, Devi Lal Colony,
 Near Masjid, Gurgaon,
 Haryana.

Versus

Commissioner of Customs ...Management
 Air Cargo Exports)
 New Custom House, Near IGI Airport
 New Delhi-110037.

Appearances:

Claimant in person	: For the Workman
None for the management	: For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management O/o the commissioner, custom Air Cargo, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 11012/61/2009-IR (CM-I) dated 17.02.2010 to this tribunal for adjudication to the following effect.

Whether the action of the management of Custom Air Cargo in separating Shri Mahavir, Helper/Tea server from the services w.e.f. 10.09.2006 as contended by the workman concerned is justified and legal? To what relief is the workman concerned entitled?"

Facts giving rise to this dispute, in short, may be stated as follows.

The Disputant workman Mahavir Singh has stated that he was working as a permanent/regular employee of the management being appointed as a helper/tea server in export Shed, Air Cargo, IGI Airport New Delhi w.e.f. November 2001 and worked in the same grade continuously for a period of 5 years till 10 September 2006. During this period he was drawing a salary of Rs.6000/- Per month. He was discharging his duties diligently leaving no scope for complain. Suddenly on 10.09.2006 the 2nd party management terminated his service without assigning any valid reason for the same. It is the further case of disputant workman that at the time of employment no letter of appointment was issued to him. On subsequent dates though he was demanding for the same the management never obliged. At the time of the termination of the job neither he was served with a notice nor any notice pay or termination compensation was paid. During the course of employment the management was availing his service on National and weekly holidays too. The

salary for august 2006 was not paid to him when he was terminated on 10.09.2006. For the said termination without following procedure laid u/s 25-F of the ID Act the workman had raised a dispute before the Labour Commissioner. A conciliation proceeding was initiated. The management though participated in the same did not agree for the reinstatement the workman to service. Hence, the appropriate government referred the matter for adjudication in terms of reference.

The management on receipt of notice appeared and filed a written statement rebutting the claim advanced by the workman. Denying the relationship with the workman as its employee, the management has stated that the commissioner of customs (Export) is head of the department and he makes the appointment following the procedure prescribed. During the period between November 2001 to September 2006 the claimant Shri Mahavir Singh was never appointed as a permanent/regular employee nor he had ever worked as a helper on behalf of the department. Therefore there was no occasion for termination of service of the workman by the management.

It is the further stand of the management that the later was never paying salary to the workman. The respondent being a government department all work relating to the export is carried out by the employees of the respondent in accordance with the provisions of the customs Act. No outsider is ever allowed to carry on any work for the respondent/management. With such assertion the respondent/Management stated that the claim advanced by the management is not tenable and claim petition is liable to be dismissed.

After completion of the pleading by both the parties, an application was filed by the management for framing a preliminary issue. When that petition was pending the workman filed another petition under O11R12& 14 read with section 151 of CPC for discovery and production of documents. The management took time on several occasion for hearing of the said petition. At last for non prosecution on the part of the management by order dated 21.11.2012 the management was set ex-parte and the case was adjourned for evidence to be adduced by the workman. On 06.08.2013 the workman filed his evidence and keeping in view the fact that the management was ex-parte, argument was heard. At that juncture on 07.10.2013 the management again appeared through it's A/R and prayed for time for argument. Thereafter the matter suffered several adjournments for argument and on 21.04.2014 it was adjourned for award.

At this stage again it was brought to the notice of the tribunal that the workman though filed the affidavit had not tendered the same. On the next date opportunity being give the workman tendered the affidavit evidence and the case was fixed for award. On 05.06.2014 the award was accordingly passed.

While the matter stood thus, the Hon'ble High Court of Delhi in WPC No. 3739 of 2015 filed by the respondent, by order dated 02.03.2017 set aside the award and directed the parties to appear before the tribunal on 20th March 2017. Accordingly notices were issued to the parties and on 20.04.2017 both parties appeared and case was adjourned to 01.06.2017 for cross-examination of the workman witness. In the manner the matter suffered adjourned till 26 September 2017. On the next date of adjournment i.e. 11.10.2017 the claimant was present to be cross-examined by the management. But no one was found present on behalf of the management till 3 P.M of that day. Hence, on 11.10.2017 the management was again proceeded ex-parte and the case was listed for argument. Thereafter during the period between 11.10.2017 to 14.12.2018 i.e. for about 1 year the matter suffered 9 adjournments. On the adjourned dates though the workman was present none appeared for the management. At last on 14.12.2018 argument was heard from the side of the workman and the matter was reserve for award.

During the course of hearing the workman Mahavir Singh testified as WW1 and filed a series of documents which were marked as Exhibit WW1/1 to WW1/7. The oral testimony of the workman has not been challenged by way of cross-examination. The management, though in the written statement has disputed its relationship with the workman as the employer, no evidence has been adduced. On the contrary the workman has produced the documents which include the icards issued to him by the management, the consignment register, the orders of the deputy commissioner of customs, establishment order No. 146/CUS/2005 and the copy of the duty roasters.

By filing the icards marked as WW1/1 the workman has asserted that he was working under the managerial control and supervision of the management. By filing the extract of the register i.e the consignment register marked as WW1/1 the workman has stated that the said register contains the entries in his hand writing which proves that he was working like a clerk. But surprisingly relevant entry has not been proved by the workman. Similarly the workman has relied upon a document marked as WW1/3 which appears to be the order issued by the Deputy Commissioner custom. It is not understood, for what purpose these orders have been filed. These documents nowhere refer the status of the present workman Mahavir Singh. Similarly some documents have been filed by the workman which have been marked as WW1/4. This is the establishment order of the year 2005. This document is of no help to the workman since, it, no where reflects the name of Mahavir Singh. The other document relied by the workman is the roaster register and this document has no reference about the present workman.

Hence, from the evidence adduced by the workman which though not challenged by the management it is difficult to accept that at any point of time the workman was under the employment of the management or there exists any employer employee relationship between them. Similarly for want of evidence it cannot be said that the service of the workman as an employee was illegally terminated by the employer i.e. the management/respondent. Thus, it is held that the workman is not entitled to any relief as has been sought by him. Hence, ordered.

ORDER

The claim petition be and the same is dismissed. The reference is accordingly answered. Consign the record.

Smt. PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 11 मार्च, 2019

का.आ. 403.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सेवन स्टार प्राइवेट लिमिटेड एंड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 48/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.03.2019 को प्राप्त हुआ था ।

[सं. एल-20013/02/2019-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 11th March, 2019

S.O. 403.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi (Ref. No. 48/2016) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Seven Star Private Limited and Others and their workmen, which was received by the Central Government on 05.03.2019.

[No. L-20013/02/2019-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI****Present:**

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour,
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 48/2016**Date of Passing Award- 30th January, 2019****Between:**

Shri Mani
R/o. - 4/6, Jharera village Delhi Cantt,
New Delhi,
Hindustan Engineering and General Majdur Union,
(Reg. 4479).
Head Office:- D-2/24 Sultan Puri, Delhi

...Workman

Versus

National Security Guard,
Administrative Branch Mehrum Nagar,
Domestic Airport Palam, New Delhi.

...Managements

M/s. Seven Star Pvt. Ltd.,
Administrative Branch Mehrum Nagar,
Domestic Airport Palam, New Delhi.

M/s. Patheya Enterprises,
C-108 Mahavir Vihar, Sector-1,
Dwarka New Delhi -45,

M/s. Akansha Enterprises,
C-108 Mahavir Vihar, Sector-1,
Dwarka New Delhi -45

Appearances:

Shri Kailash, Advocate : For the Workman
 Shri Atul Bhardwaj, Advocate : For the Management

AWARD

The claimant Shri Mani by filing an application u/s 2-A of the ID act 1947 has invoked the jurisdiction of this Tribunal for the adjudication of this Industrial Dispute between him as the 1st party and the Director General National Security Guard Administration, M/s. Seven Star Pvt. Ltd., M/s. Pathya Enterprises and M/s. Aakanksha Enterprises as the second party (herein after referred to as respondent no. 1, 2, 3 and 4 respectively.)

In the claim petition the workman has stated that he was working in the job of house keeper with the respondent No.1. He was under the direct supervision of respondent No.1 and getting salary per month from the said respondent. But respondent No.1 in order to deprive the claimant workman of his lawful right had entered into contract with different contractors at different point of time to show as if the workman was employed through the contractor. The said contract between the respondent No.1 and respondent No. 2, 3 and 4 was sham and camouflage. Neither the respondent No. 1 had the registration under the Contract Labour Act nor respondent No. 2,3 and 4 were having license per the provision of the said Act to provide Labour and manpower on contract.

The workman was an active member of the union demanding regularization of the employment of the workmen working on contract and wage. Inspite of the repeated demand, the management No.1 did not issue appointment letter, wage slip, identity card, attendance card etc. The respondent No.1 also did not pay the legal dues like the Bonus, ESI and PF facilities. Though the workman had worked with the management for a period of 2 years i.e upto 11.07.2015 the respondent No.1 without assigning any reason terminated his service on that day. No letter of termination, notice for termination, notice pay or termination compensation was paid to the workman. Being aggrieved on 20.07.2015 the workman served a demand notice on the management demanding reinstatement and back wages and also pointed out that his termination is in gross violation of section 25-F of the ID Act. When management took no action on the said notice, the workman approached the Assistant Labour Commissioner. The matter was taken up for conciliation but no solution could be arrived. Thus, the workman withdrew his application and approached, this tribunal with the application filed u/s 2-A of the ID Act.

Being noticed management No.1 i.e Director General National Security Guard, management No. 3 and 4 entered appearance separately and also filed their separate written statement. The management No. 1 has denied the employer employee relationship between the workman and the respondent. It has been pleaded that this department is a Federal Contingency Force of Government of India under Ministry of Home Affairs and never hires labourers or housekeeping staff directly. This department had floated a tender in September 2012 for outsourcing person for housekeeping job. Respondent No.4 was awarded with the contract for one year w.e.f 01.03.2013. This workman was in the contractual employment of respondent No.4 and has no relationship with Respondent No.1.

Respondent No.4 in its separate written statement has admitted about it contract with respondent No. 1 from 01.03.2013 to 10.07.2015. Since it's contract came to an end w.e.f 11.07.2015 the present workman alongwith others were ask to continue their job at another site but he refused. This respondent has further stated that the workman was getting his wage as per the government rate and all the benefits like PF and ESI were extended to him.

Similarly respondent No. 3 by filing a written statement has stated that he had a contract with management No.1 for the period from 01.06.2011 to 31.05.2012. The present workman was never employed by this respondent to work in the office of respondent No.1.

On the above mentioned rival pleadings the following issues were framed for consideration.

ISSUES

1. Whether the claim is not legally tenable in view of the various preliminary?
2. Whether the claimant is entitled to relief of reinstatement?
3. Relief.

When the matter was taken up for adjudication the claimant remained absent. Neither he filed any document nor adduced any oral statement. Similarly the management No.1,2,3and 4 have not adduced any oral or documentary evidence. On behalf of management No. 4 the photocopy of the daily Attendance Register for the period April 2015 to July 2015 has been filed which reveals that during this period all total 19 persons were engaged on daily wages by respondent No. 4 and name of the present workman appears at serial No. 15. Except this document there is no document to believe that the present workman had ever any relationship with the management No. 1,2,3 and 4.

Since, the workman has failed to substantiate the claim advanced in his petition, it is held that the workman has no claim to be decided in this proceeding. The petition filed by the workman is accordingly answered.

Smt. PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 13 मार्च, 2019

का.आ. 404.—ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 37/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.03.2019 को प्राप्त हुआ था।

[सं. एल-12011/41/2009-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 13th March, 2019

S.O. 404.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2009) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court*, Bangalore as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 13.03.2019.

[No. L-12011/41/2009-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 22nd FEB 2019

PRESENT : Justice Smt. Rathnakala, Presiding Officer

C.R No. 37/2009**I Party****II Party**

Sh. Thimmanna T,	The General Manager,
No.8, Chikkasandra,	Bank of Baroda,
Hesaraghatta Road,	Regional Office, 3 rd Floor,
Behind Rambajane Mandira,	HJS Chambers, No. 26,
Bangalore – 560 057.	Richmond Road,
	Bangalore – 560 025.

Advocate for I Party : Advocate for II Party:

Mr. Muralidhara : Mr. Ramesh Upadhyaya

AWARD

1. The Central Government vide Order No.L-12011/41/2009-IR(B-II) dated 07.07.2009 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 referred the following Industrial Dispute for adjudication

“Whether the action of the management of Regional Office, Bank of Baroda, Bangalore, Karnataka in terminating the service of Shri T. Thimanna, Ex-temporary Sub Staff w.e.f. 31.07.2006 without complying the provisions of section of ID Act, 1947 is legal and justified? To what relief the applicant workman is entitled?”

1. Pleadings are complete and both parties have adduced their evidence. IInd party examined one witness. Ist party examined himself as WW-1 and produced documents Ex- W-1 to Ex W-9. Written Arguments is placed by both the parties.

2. It is the case of the Ist Party workman that, he has worked as an empanelled sub staff at the M.G. Road Branch of the IInd Party from 06.09.1993. He was transferred from the said branch once to the Regional Office and again to other branches of the Bank. While working in the Palace Orchards Branch due to his health issues he was hospitalised and could not attend duty from 24.04.2006 to 30.07.2006. Subsequently when he reported to duty he was not permitted to work. It appears the Senior Branch Manager had addressed a letter dated 25.05.2006 to the Assistant General Manager about his request to report to the duty. His representations made to various authorities in the Bank did not elicit

any response. He was eligible for regularization of service in lieu of the settlement arrived by the Bank of Baroda Employees union and the Bank. His absence from 24.04.2006 to 30.07.2006 was for bonafied reason. The Bank did not follow Principle of Natural Justice while terminating him from the service. They have not paid retrenchment compensation to him. Hence, termination is against the provision under section 25-F of the Industrial Dispute Act.

3. The IInd Party in the counter statement stood on a pedestal of total denial, they contended that there was inordinate delay of 2 years in raising the dispute, at no point of time he was appointed as a temporary sub staff; for recruitment as a sub staff either on temporary or permanent basis, the vacancy should be sanctioned by the General Manager in charge of HRM. Thereafter an indent is required to be placed with the employment exchange. On receiving the list of candidates sponsored by the employment exchange, candidate is to be interviewed. After medical examination of the candidate selected in order of merit they will be appointed on probation. The Ist Party has not undergone the above process, his termination if any is in accordance with section 2(oo)(bb) of the Industrial Dispute Act, 1947.

4. At the stage of pleading, the IInd Party had taken a stern stand disputing the identity of the Ist Party workman. Interestingly their witness/Senior Manager of the Regional Office during his cross examination identified the documents confronted to him by the Ist Party and they were marked in evidence. Going by these documents –

Ex W-1 (Xerox copy) is the Letter addressed by the Chief Manager to the Assistant General Manager on 22.07.1996. This Letter pertains to engagement of persons on daily wage/temporary basis. As per this document Name of the workman is Mr. Thimmanna T (Urf Harish) who is working in their branch since September 1993 and his Date of Birth is 15.05.1969 finds place in this document.

Ex W-2 is the Letter addressed to the Assistant General Manager at the Regional Office of IInd Party by Branch Manager on 07.02.2000. The break up figure of the wages paid for the month of January 2000 is detailed as below:

Basic	1600
DA	1387
CCA	75
HRA	200
Conveyance	50
Special Pay	65
Total	3377

Ex W-3 (Xerox copy) is the Letter dated 10.10.2000 addressed by the Senior Branch Manager regarding regularization of the temporary worker Mr. Thimmanna T/ Ist Party. As per the details he has worked from 22.09.1993 at M.G. Road Branch, from July 1999 to December 1999 at the Regional Office, from December 1999 to 22.09.2000 at J.P Nagar Branch and from 23.09.2000 at Siddiah Road Branch as a peon. His education qualification is 7th Standard pass, his appointment is sponsored by the employment exchange office with Registration No. 1529/98. He worked for 2507 days as on 31.07.2000 and he belongs to OBC category. He is sincere, honest and hardworking person who needs further encouragement.

Ex W-4 is the letter of the Assistant General Manager dated 25.09.2000 addressed to the Branch Manager calling upon the information pertaining to the Ist Party workman.

Ex W-5 is the detail of total service rendered by him. Accordingly, upto 31.03.2001 he had worked for 2749 days.

Ex W-6 is his salary particulars which again detailed the break ups of Basic and other allowances.

Ex W-7 is the letter addressed to the Senior Branch Manager calling for the particulars of Ist Party/workman by the Senior Manager (HRM).

Ex W-8 is reply to Ex W-7.

5. Learned counsel for the IInd Party has tried to improve Management's case at the stage of argument. It is the submission of the Learned counsel 'though there was no contract of employment between the parties, his service might have been utilised on need basis, no documentary proof is produced by the Ist Party to establish that he was an empanelled sub staff/temporary staff with them. When there is no contract of employment between the parties, there could not be refusal of employment and his termination if any falls under the category of section 2(oo)(bb) of the Industrial Dispute Act,1947. Wherefore, there is no question of awarding any relief in his favour'. Learned counsel has also added that subsequent to the judgment of the Apex Court in Secretary Sate of Karnataka & Others vs Umadevi and another in Appeal (Civil) No. 3595-3612/1999 'Any reinstatement of the Ist Party workman will be against the dictum of the Apex Court. Ultimately, he is seeking for regularization of his service under the tripartite settlement arrived between the union and the IInd Party'. If he was entitled for any regularization he would have applied for the post when the applications were called for.

6. In support of his contention the learned counsel has placed his reliance on number of judgments of the Higher Courts; among them the judgments in Bhavnagar Municipal Corporation vs Salimbhai Umarbhai Mansuri in AIR 2013 Supreme court 2762 and Manager (now Regional Director), R.B.I vs Gopinath Sharma and Another in AIR 2006 Supreme Court 2614 are most relied. In the first cited judgment, the principle highlighted is, on expiry of term, service shall stand terminated and it will not amount to retrenchment. As per the second cited judgment, workman therein who

had not appointed to any regular post, and who had worked only for **58 days** was held, not to have any right to hold regular post. The judgment also highlighted that a stale dispute raised after inordinate delay cannot be entertained.

It is also to be noted that, the refusal of employment to him on 27.07.2006 is not attributed as a measure of punishment. On the request of Ist Party certain documents insisted by him personally in the custody of the IInd Party were called for. Vide memo dated 05.09.2017, IInd Party produced number of vouchers in respect of the payments made to Ist Party/Workman.

7. On a perusal of the evidentiary material, I have noticed that, after the management witness identified there documents during his cross examination there is no challenge to the veracity of these documents. No effort is made by the IInd Party to establish that these documents were either fake or concocted. As such the documents Ex W-1 to Ex W-8 throw light on the position of the Ist Party/workman. Though it was submitted on behalf of IInd Party that the details of the wages with break ups does not mean that he worked against any permanent vacancy, in fact the wages were paid to the temporary daily wagers in accordance with the basic and emoluments enjoyed by the permanent Group-D workers, it can be safely held that Ist Party had worked continuously for 266 days preceding refusal of work for him on 30.07.2006.

8. Accepting the stand of the IInd Party that, there is no previous contract of employment and he might have worked as a daily wager on need basis then also the he cannot be thrown out of the umbrella of the beneficial legislation of the Industrial Dispute Act. Even if he worked as a daily wager on need basis, for having worked continuously for 266 days in the preceding date of his last day, his service falls within 25-B(2a)(ii) of the Industrial Dispute Act and his removal/ termination without retrenchment compensation is illegal.

When the IInd Party has failed to show that it was a tenure based contract, the Ist Party safely comes out from the rigour of section 2(oo)(bb) of the Industrial Dispute Act. And it is an incident of illegal retrenchment. There is no contrary material to Exhibit Ex W-1 to Ex W-8.

It is not the case made out by the IInd Party that it is case of voluntary abandonment of service or incident of termination/dismissal. The logical conclusion is the Ist Party having worked for 13 long years and had worked continuously for 266 days in the year preceding his last date of his service (01.08.2005 to 30.07.2006) was not provided employment when he reported to duty neither any compensation was paid. Certainly this amounts to retrenchment in violation of the mandatory requirements by the management of section 25 F of the Industrial Dispute Act, 1947. Therefore, the conclusion is illegally retrenched from service and entitled for relief.

9. Then comes the question of moulding the relief for him. Industrial settlement arrived between the Bank and the Employees Federation/a recognized union on behalf of temporary peon/sweepers dated 18.03.2008 is at Ex W-9 it provides salutary relief to similarly placed workmen. Whether or not the Ist Party is entitled for the benefits of the settlement is beyond the purview of the reference. Our focus is on the relief that can be awarded to the injustice done to the workman consequent upon his illegal retrenchment.

10. Though it is contended that, there was inordinate delay in raising the dispute, one has to understand the plight of a workman who lost his employment even after rendering 13 years of service. The reference is ordered within 3 years of illegal termination. In my opinion it is not inordinate delay. The Ist Party in his evidence has not pleaded that he has no source of livelihood to hold his body and soul intact. Wherefore, in the considered opinion of this Tribunal, reinstatement with a lump sum compensation of Rs. 50,000/- would equate the injustice suffered by him. Accordingly, following.

AWARD

The reference is accepted, the IInd Party is directed to reinstate the Ist Party workman Sri. Thimmanna.T as temporary sub staff forthwith and pay compensation of Rs. 50,000/- in lump sum towards his back wages within 60 days.

(Dictated, transcribed, corrected and signed by me on 22nd February, 2019)

Justice Smt. RATHNAKALA, Presiding Officer

नई दिल्ली, 13 मार्च, 2019

का.आ. 405.—ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैं कोटेकना इस्पेक्शन इंडिया प्रा. लि. के प्रबंधतंत्र के सबद्व नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ सं. 45/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.03.2019 को प्राप्त हुआ था।

[सं. एल-37011/12/2017-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 13th March, 2019

S.O. 405.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, AHMEDABAD (GUJARAT)* as shown in the Annexure, in the industrial dispute between the management of M/s. Cotecna Inspection India Pvt. Ltd. and their workmen, received by the Central Government on 13.03.2019.

[No. L-37011/12/2017-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 19th February, 2019

Reference: (CGITA) No. 45/2017

1. The Regional Manager,
M/s. Cotecna Inspection India Pvt. Ltd.,
Khalsa Avenue 1st & 2nd Floor, Plot No. 210, Sector 1A, Gandhidham,
Kutch (Gujarat) - 370 201
2. The Director,
M/s. Cotecna Inspection India Pvt. Ltd.,
213, 214 & 215, The Sumit Business Bay,
Behind Gurunanak Petrol Pump, Opp. Cine Max,
Off Andheri Kurla Road, Prakashwadi, Andheri (East),
Mumbai-400069

...First Parties

V/s

Shri Murji K. Vinjoda,
Plot No.A-33, Sector-7, Gandhidham,
Kutch (Gujarat) – 370201

...Second Party

For the First Parties : None
For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/12/2017-IR (B-II) dated 16.05.2017 referred the dispute for adjudication to the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of M/s. Cotecna Inspection India Pvt. Ltd., Mumbai over forceful termination from service of Shri Murji K. Vinjoda is legal and justified? If not, what relief the workman is entitled to and to what extent?”

1. The reference dates back to 16.05.2017 and received on 30.05.2017 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. All the parties issued notice Ex. 2 on 11.05.2018 to appear on 13.06.2018. Acknowledgement slips of notice were also received from first party no. 2 and second party workman vide Ex. 3 and 4 respectively. But the second party workman did not prefer to submit the statement of claim. Thereafter, 5 more opportunities were given to the second party workman on 06.08.2018, 25.09.2018, 06.11.2018, 01.01.2019 and today on 19.02.2019 to appear and submit statement of claim but he neither appeared nor submitted the statement of claim.
3. Thus it appears that the second party workman is not willing to prosecute the reference.
4. Therefore, the reference is disposed of in the absence of the statement of claim of the second party workman with the observation as under: “the action of the management of M/s Cotecna Inspection India Pvt. Ltd., Mumbai over forceful termination from service of Shri Murji K. Vinjoda is legal and justified.”
5. The award is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 14 मार्च, 2019

का. आ. 406.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एस.बी. इंजीनियरिंग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 19/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.03.2019 को प्राप्त हुआ था।

[सं. एल-30011/53/2013-आईआर(एम)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 14th March, 2019

S.O. 406.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/2014) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. S.B. Engineering and their workman, which was received by the Central Government on 13.03.2019.

[No. L-30011/53/2013-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 19 of 2014

Parties: Employers in relation to the management of M/s. S.B. Engineering

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the workmen : Mr. S. Bhattacharjee, Learned counsel

State: West Bengal

Industry:

Dated: 28th February, 2019

AWARD

By Order No.L-30011/53/2013-IR(M) dated 20.02.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of management of M/s. S.B. Engineering, Contractor of India Oil Corporation Ltd. (Marketing Division), Haldia Refinery is justified by terminating the service of 4 (four) no. of workmen namely Sk. Ushiar Rahman, Based Khan, Sk. Syed Ali and Mohar Khan vide letter dated 28.01.2013 is legal and/or justified? If not, what relief the workmen are entitled to?”

2. Brief facts in the back ground of which above reference has come up before this Tribunal are that the workmen concerned were employed by different contractors from time to time under the employer, Indian Oil Corporation. Lastly the concerned workmen were working under the immediate employer, M/s S.B. Engineering since 01.01.2006. They used to record attendance in the attendance card issued by the management of M/s. S.B. Engineering. Payment was also made by the Company through wage slips. Name of the concerned workmen and the contractor was also mentioned in the photo pass issued by the Central Industrial Security Force, Unit: IOC, Haldia. All of a sudden payment of monthly salary for the month of July and August, 2012 were stopped and finally not made without disclosing any reason whatsoever and thus the concerned workmen were terminated on 1st September, 2012 by not renewing get passes of the management under reference without any reason. The concerned workmen individually by letter dated 18.09.2012

requested the management of the company to renew their gate passes and allow them to continue in their service with all due payment, but the management did not pay any heed to the same. The concerned workmen sought intervention of the Regional Labour Commissioner, Government of India, but the conciliation was not fruitful. Thus an industrial dispute arose which has been referred to this Tribunal by the Government of India for adjudication. It has been pleaded by the concerned workmen in their statement of claim that they admittedly worked under the present company from 01.01.2006 to 31.08.2012 at a stretch without any break. Thus they performed much more than 240 days work in a year. They rendered 34 years' of service in the same premises under Indian Oil Corporation, Haldia. It is further pleaded that the pre-condition for retrenchment of the concerned workmen as provided under Section 25F of the Industrial Disputes Act, 1947 have not been complied with. It is also pleaded that the action of the management is arbitrary and unlawful. They could not secure any alternative employment elsewhere after termination of service and as a consequence of which they remained unemployed. Thus, the concerned workmen have claimed that their termination is wholly illegal and unjustified. They are entitled for reinstatement alongwith back wages.

3. Despite sufficient service, the management did not appear before this Tribunal, neither written statement was filed. Therefore, the case proceeded ex parte against them and ex parte evidence of the workmen concerned was recorded. On behalf of the concerned workmen, Shri Sk. Syed Ali has filed affidavit-in-chief to substantiate the case of the workmen.

4. I have heard the learned counsel for the workmen and perused the record.

5. The concerned workman, Shri Ushiar Rahaman, Shri Based Khan, Shri Sk. Syed Ali and Shri Mohar Khan have pleaded in their statement of claim that they were working with M/s. S.B. Engineering since 2006. Their attendance was being recorded in the attendance card issued by the management of the company and payment was made by the company through wage slip, but all of a sudden the payment of monthly salary of July and August, 2012 was stopped and finally their gate passes were not renewed with effect from 1st September, 2012. They have claimed that they have worked for more than 240 days in preceding 12 months of their alleged termination and therefore, they are entitled for protection of provisions of Section 25F of the Act of 1947. Admittedly, no formal termination letter was issued to the workmen. However, it has been contended by citing **H.D. Singh v. Reserve Bank of India**, AIR 1986 SC 132 that striking off of the name of the concerned workmen from the service for any reason whatsoever amounts to their termination and it was incumbent on the part of the management to comply with the provisions of Section 25F of the Act of 1947 before their termination.

6. Section 25F of the Act of 1947 reads as follows: -

"25F. Condition precedent to retrenchment of workmen – No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –

- (a) *the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months: and*
- (c) *notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."*

7. "Continuous service" has been defined under Section 25B of the Act of 1947 according to which where a workman is not in continuous service within the meaning of clause (1) of Section 25B for the period of one year or six months, he shall be deemed to be in continuous service under an employer when he has actually worked for not less than 240 days. It has been contended on behalf of the concerned workmen that they have completed working for more than 240 days in a year. Therefore, their retrenchment are illegal as conditions precedent as contained in Section 25F of the Act were not complied with.

8. On the question of burden of proof as to the completion of 240 days of continuous work in the preceding year, Hon'ble the Apex Court in **Range Forest Officer v. S.T. Hadimani**, 2002 (93) FLR 179 has held that –

"In our opinion the Tribunal was not right in placing onus on the management without first determining on the basis of cogent reason evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but his claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had, in fact, worked for 240 days in the year preceding his termination. Filing an affidavit is only his own statement in his favour and that cannot be recorded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

9. In **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan & Another**, 2004(4) LLN 845 : **Municipal Corporation, Faridabad v. Srinibas**, 2004 (4) LLN 785 and **Madhya Pradesh Electricity Board v. Hariram** 2004 (4) LLN 839 Hon'ble the Apex Court reiterated the principles that burden of proof lies on the workman

to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment and it is for the workman to adduce evidence apart from examining himself to prove that the factum of his being in employment of the employer.

10. Referring and analyzing these earlier judgments in above case laws Hon'ble the Apex Court in **R.M. Yellatti v. The Assistant Executive Engineer**, reported in Supreme Court Cases (L & S) page – 1 again held that burden lies on the workman concerned. The relevant paragraphs of the judgment may be quoted as under:

"Analyzing the above decisions of this Court, it is clear that the provisions of the Evidences Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman were not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon facts of each case."

11. Above case laws have again been relied on by Hon'ble the Apex Court in Krishna Bhagya Jala Nigam Ltd. v. Mohammed Rafi, 2009 (123) FLR 612 wherein burden of proof has been held to be on workman concerned to prove that he had worked for 240 days in a given year.

12. Thus in view of above legal principles burden lies upon the concerned workmen to prove that they have worked for 240 days in the year preceding their termination. Admittedly their termination came into effect on 1st September, 2012 when their gate passes were not renewed by the management of the company. Now the relevant date for counting 240 days is the date of their termination of service, i.e., 1st September, 2012. Commencing from the date and counting backward working of 240 days within a period of 12 months is required to be established. Learned counsel for the workmen has relied on wage slips filed by them. From the perusal of which it is established that the workman, Shri Ushiar Rahaman has worked with M/s. S.B. Engineering and payment was made to him by the company through wage slips from January, 2010 to May, 2012. As the workman has to establish that he has worked for 240 days in a year preceding the date of his termination, the wage slips of August, 2011, September, 2011, November, 2011, December, 2011, February, 2012 to May, 2012 are sufficient to establish that he worked for 240 days during the preceding 12 months of his date of termination. Similarly, wage slips of Shri Based Khan from August, 2011 to June, 2012 have been filed to prove that he had also worked for more than 240 days in 12 months preceding the date of his termination. Shri Sk. Syed Ali has filed wage slips from September, 2011, November, 2011, December, 2011 and January, 2012 to June, 2012. The fourth workman, Shri Mohan Khan has filed wage slips from January, 2011 to May, 2012. All these wage slips are sufficient to prove that all the concerned workmen have worked for more than 240 days during 12 months preceding the date of their termination. Thus it was incumbent upon the management to terminate their service only after complying with the provisions of Section 25F of the Act of 1947. Admittedly the provisions of Section 25F of the Act have been not been complied with. Therefore, their termination is bad in eye of law.

13. Though the concerned workmen are entitled for their reinstatement after their termination having been declared illegal, but admittedly out of above four workmen, Shri Ushiar Rahaman, Shri Based Khan and Sk. Syed Ali have crossed the age of superannuation. Hence they are not entitled for reinstatement. The date of birth of Shri Mohan Khan as mentioned in his PAN Card, copy of which is available on record is 30th September, 1965. Thus this workman has still 5 years to go in service. Therefore, he is entitled for reinstatement. However, on the principle of 'no work no pay' he is not entitled to any back wages.

14. The concerned workmen, Shri Ushiar Rahaman, Shri Based Khan and Shri Sk. Syed Ali have stated in their statement of claim as well as examination-in-chief that after termination of their services, they remained unemployed. Therefore, they are entitled for compensation. Keeping in view their remaining length of service, had they not been terminated in September, 2012, Shri Ushiar Rahaman is entitled for compensation of Rs.2 lakh and the remaining workmen, Shri Based Khan and Shri Sk. Syed Ali shall get compensation of Rs.1.5 lakh each for their illegal termination.

15. Award is passed accordingly.

Dated, The 28th February, 2019

Kolkata

नई दिल्ली, 14 मार्च, 2019

का.आ. 407.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारत पेट्रोलिमय कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 43/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.03.2019 को प्राप्त हुआ था।

[सं. एल-30011/42/2004-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 14th March, 2019

S.O. 407.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 43/2004) of the Central Government Industrial Tribunal/Labour Court-1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd. and their workmen, which was received by the Central Government on 13.03.2019.

[No. L-30011/42/2004-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, DWARKA COURTS COMPLEX : NEW DELHI

ID No. 43/2004

1- General Secretary,
Delhi Multi Storeyed Building Employees Congress,
Vandana Building, 11 Tolstoy Marg,
New Delhi.

1A- Mr. K.S. Rajan S/o. Shri NSKV Chandppha,
R/o. 21, S.M. Colony, Mori Gate,
New Delhi -6 and 15 other workmen

...Workmen/claimants

Versus

The Management of Bharat Petroleum Corporation Ltd.,
Govt. of India Enterprises,
ECE House, Connaught Circus,
New Delhi 110001.

...Management/Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Tribunal vide letter No. L-30011/42/2004-IR(M) dated 10.09.2014 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

'Whether the demand of the Delhi Multi Storeyed Building Congress Union, Vandana Building, 11 Tolstoy Marg, New Delhi against the management of BPCL, New Delhi/Noida for regularization/ absorption of 16 workers (list enclosed) engaged in canteen from 1970 to 1992 is just, valid and legal ? If so, to what benefits the workmen are entitled for and what directions are necessary in the matter.'

2. Both parties were put to notice and the claimants KS Rajan and 15 others filed their joint statement of claim, with the averments inter alia that they were inducted into service of the Management on different dates ranging from 1970 to 1992 and they have been working continuously without any break for the last many years in the Canteen/s of the Management. It is pleaded that though the Management is paying full monthly wages to the claimants besides other allowances but the Management had neither regularized the services of the workmen, nor gave them wage parity and thus, the Management is resorting to unfair labour practice of exploiting workers. Prayer has been made for directing the Management to regularize the services of the claimants with all consequential benefits with respective dates of their initial appointments as mentioned in Annexure P-1 and to pay equal wages, allowances and other service benefits to the claimants as are being paid to their regular counterparts.

3. Management resisted the claim of the Workman, by filing written statement. While denying the averments as made in the claim petition, it has been alleged that claimants were employed through Canteen Committees which was having effective control and supervision over the workers deployed in the Canteen. The relationship of employer-employee never existed between the parties at any given point of time. Prayer has been made for dismissal of claim petition with costs.

4. The workmen/claimants filed rejoinder, reiterating their own case as set up in the claim petition and denied the allegations of the Management.

5. In support of their case, the claimants./workmen examined three witnesses namely WW1 Harish Chandra, WW2 Jagdish Prasad and WW3 Girdhari Lal, whereas Management examined two witnesses namely MW1 Rajesh Kapoor, Assistant Manager. While the matter was being listed for remaining evidence of the Management, sincere efforts were made by this Tribunal for reconciliation of dispute/s between the parties since it was an old case of 2004 and it resulted into amicable settlement between the parties.

6. Today an application was moved on behalf of the claimants for withdrawal of the claim petition. Statements of Ms.Asha Jain Madan, A/R for the claimants and of Mr. Ashwini Choubey, Manager (ER) North of the Management were recorded on separate sheet/s. It is a matter of record that parties arrived at amicable settlement vide agreement/Memorandum of Settlement Ex.C-1 colly. (running into 12 pages) which is duly signed by the claimants./workmen as well as by the Officers of the Management namely Mr. Ashwani Chaubey, Manager (ER)North, Shri Sunil Limaye, DGM and Mr.L.K.Watts, G.M.(HRS- North). Management has agreed to pay lumpsum compensation amount as mentioned in the document Ex.C-2 (running in two pages) which is annexure of agreement Ex.C-1, towards all the claims of 16 Nos. of workmen/claimants including their claims for regularization, equal pay, consequential benefits etc. as claimed in the claim petition. It was clarified that the workmen/claimants are no more members of the Union through which this claim petition was filed. The Management has agreed to pay 10 per cent of the compensation amount within 5 days from today and remaining 90 per cent will be paid by it within 7 days after expiry of 30 days from the date of publication of the Award. The workmen and Management have also agreed that the claimants/workmen herein shall cease to work in the Canteen of the Management as and when the settlement/agreement is implemented fully and finally. The Memorandum of Settlement/agreement **Ex.C-1** and lumpsum payment of compensation to be made to the claimants/workmen as mentioned in document **Ex.C-2 shall form part of this Award**. Parties shall remain bound by the terms & conditions of agreement Ex.C-1 read with document Ex.C-2. In view of the settlement arrived at between the parties as mentioned above, no dispute of the claimants/workmen survives. The award is passed accordingly.

Dated : 11th March, 2019

AVTAR CHAND DOGRA , Presiding Officer

नई दिल्ली, 14 मार्च, 2019

का.आ. 408.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स नेशनल इंश्योरेंस कम्पनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 217/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.03.2019 को प्राप्त हुआ था।

[सं. जे.ड-16025/4/2019-आईआर(एम)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 14th March, 2019

S.O. 408.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 217/2017) of the Central Government Industrial Tribunal/Labour Court-1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. National Insurance Company Ltd. and their workmen, which was received by the Central Government on 08.03.2019.

[No. Z-16025/4/2019-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1, DWARKA COURTS COMPLEX : NEW DELHI****ID No. 217/2017**

Rajendra Singh
 S/o. late Shri Mangal Singh,
 R/o. 2/768, Begum Bag,
 Aligarh 202001.

...Workman/Claimant

Versus

1. National Insurance Company Ltd.
 Through Senior Divisional Manager,
 Arya Samaj Road, DAV Inter College,
 Muzaffarnagar -251201.

2. Manager,
 National Insurance Company Ltd.
 65, Rajpur Road, Jai Plaza,
 Dehradun 248001.

3. Regional Manager,
 National Insurance Company Ltd.
 65 Rajpur Road,
 Jai Plaza,
 Dehradun 248001.

... Management/Respondent

AWARD

This award shall decide a claim petition directly filed by the claimant/ workman Section 2-A of the Industrial Disputes Act, 1947(in short the Act), with the averments inter-alia that he was appointed as Peon w.e.f. 19/9/1979 under the Management and was promoted to the post of Record Keeper w.e.f. 23/7/89 and further promoted to the post of Assistant w.e.f.5/11/2001 and worked as such at different branch and lastly he was posted in Branch Office Shamli (UP). It is stated that the workman was suspended by the Divisional Manager, NIC, Divisional Office, Aligarh vide order dated 13/2/2012 and thereafter reinstated vide order dated 2/4/2013. It is pleaded that there was an eye wash in the disciplinary proceedings conducted against him and ultimately, the workman was dismissed from service vide order dated 2/5/2013, to which he preferred an appeal to the Appellate Authority but without going into the merits of the case, the said appeal was dismissed vide order dated 20/8/2015. Hence prayer has been made for quashing of the dismissal order dated 5/5/2015 and for reinstatement into service with full back wages and all other consequential benefits.

2. Management resisted the claim of the Workman, by filing written statement and took preliminary objections that the claimant who was working as Assistant failed to maintain absolute integrity, devotion to duty and he misappropriated the public money, for which he was issued charge sheet and enquiry was conducted against him. After charges were duly proved, disciplinary action of dismissal from service was taken against the claimant. It is alleged that the claimant vide his affidavit dated 8/2/2012 had himself admitted that he and Mr. Pramod Kumar were involved in the fraud. It is also alleged that proper hearing was given to the claimant before Disciplinary Authority had imposed penalty of “dismissal” upon the claimant vide order dated 5/5/2015. Prayer has been made for rejection of the claim petition.

3. On the pleadings of the parties, following issues were framed on 6/12/2016 :-

- (1) Whether termination of the claimant by the management ois illegal and against the provisions of ID Act ?
- (2) Whether the claimant is liable to be reinstated in service with continuity and full back wages ?
- (3) Whether the claim is not legally maintainable in view of various preliminary objections ?

4. Number of opportunities were granted to the Claimant to lead evidence in support of his claim but he failed to adduce any evidence. He even did not enter the witness box either to substantiate the averments made in the claim petition or to rebut the case of the Management. Perusal of the record shows that the claimant did not appear before the Tribunal from 27/11/2018 onwards despite the fact that matter was adjourned time and again and ultimately this Tribunal was constrained to reserve the matter for passing the award.

5. In view of the fact that the claimant has not led any evidence in support of his case, this Tribunal is constrained to pass No Dispute/claim Award in the matter. Since the matter has not been decided on merits, there will be no bar for the claimant to file afresh claim petition in accordance with law for adjudication of the controversy in issue or to seek any other relief to which he is otherwise entitled to. Award is passed accordingly.

नई दिल्ली, 14 मार्च, 2019

का.आ. 409.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स हिन्दुस्तान पेट्रोलिमय कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 721/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.03.2019 को प्राप्त हुआ था।

[सं. एल-30011/52/1999-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 14th March, 2019

S.O. 409.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 721/2005) of the Central Government Industrial Tribunal/Labour Court-2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corporation Ltd. and their workmen, which was received by the Central Government on 12.03.2019.

[No. L-30011/52/1999-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.721/2005

Registered on 13.03.2000

The Secretary, Petroleum Workers Union,
C-160, Sarvodaya Enclave, New Delhi.

... Workmen

Versus

M/s. Hindustan Petroleum Corporation Ltd., Chief Manager (P&A),
Tower-I, 124, Indira Chowk, New Delhi-11001.

...Management

AWARD

Passed on: 27.02.2019

Central Government vide Notification No. L-30011/52/1999/IR(M) Dated 22.01.2000, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the work performed by the 12 workmen (list attached) engaged through the contractors is of a permanent and perennial nature and whether their claim for absorption directly by the Hindustan Petroleum Corporation Ltd. is justified and legal? If yes, to what relief the workmen are entitled to?”

1. The facts, in brief, are that the workers namely Sh. Ram Kanwar S/o Sh. Suraj Bhan, Sh. Satish Kumar S/o Sh. Raghbir Singh, Sh. Suresh Kumar S/o Sh. Tara Chand, Sh. Ranbir Singh S/o Sh. Satyawan, Sh. Rakesh Kumar S/o Sh. Jit Singh, Sh. Kuldeep Singh S/o Sh. Zile Singh, Sh. Anil Kumar S/o Sh. Kewal Singh, Sh. Sunil Kumar S/o Sh. Mohinder Singh, Sh. Bijender S/o Sh. Bhale Ram, Sh. Shilak Ram S/o Sh. Krishan, Sh. Jasmer S/o Sh. Dharam Bir Singh and Sh. Mukesh Kumar S/o Sh. Jit Singh, were employed by the management of Hindustan Petroleum Corporation Ltd. on its LPG Bottling Plant at Village Asauda, Teh. Bahadurgarh, Haryana and were performing the duties of loading and unloading function of LPG Cylinder and were doing the work of putting seal cap on the cylinders, preparing of soap solution, sorting out defective cylinders and carrying on cylinders. The workers were performing their duties under the supervision of Officers of Corporation and to the entire satisfaction of respondent-management and worked from 1993 or 1994 till 1998 regularly under the different contractors for more than 240 days in a calendar year. During the period of their service, neither any licence under the Contract Act was taken by the Contractor or the respondent-management for doing the particular work and the LPG Bottling Plant at Asauda was not registered under the

Contract Labour Regulation and Abolition Act and was not issued any licence to keep contractual workers. All these workers are performing the function of Hindustan Petroleum Corporation Limited and action of the management in retrenching the above mentioned workers without following the provisions mentioned in the Industrial Disputes Act, 1947 under Section 25-F, 25-N, 25-G and 25-H are illegal and bad in the eye of law. It is prayed that all the above titled workers may kindly be reinstated in service as regular workers with continuity of service and full back wages as well as with all consequential benefits.

2. Respondent-management filed written statement, denying the facts alleged in the claim petition with the averments that petitioners/workers were never engaged by the respondent-management as such, the Tribunal has no jurisdiction to adjudicate between the parties. In fact, respondent-management has engaged contractors for its plant through contract agreement as per purchase procedure of the corporation for cylinder handling, stacking, unstacking of cylinders as per requirements. These are not the core activity of the corporation hence, the corporation are getting these jobs through contractors. The jobs are not of regular in nature. It is alleged that all the workmen are working since 1993 is not correct. On a perusal of scrutiny of official record, it has transpired that out of 12 workers, only 7 are engaged by M/s Ramphal during 1995 to 1997 and M/s Jai Singh during 1997 to 1999. There was no contractor at the plant by name of M/s Ram Swaroop. These contractors were paid applicable wages as per statute and nature of job being performed by the workers are not fixed for scheduled at fixed hours. The duties of the workers are retrenched by the contractor and not by the respondent-management and it was duly supervised by the contractors. All the contractors were having their valid licence and respondent-management is also have their valid registration number as such, there is no violation of any of the provisions of the Act. The retrenchment of the workers by the management is totally wrong, misleading and scandalous and is vehemently denied. Neither they were engaged by the respondent-management nor there was relationship of master and servant between the parties. Thus, the provisions of the Industrial Disputes Act are not attracted to the present case. The provisions of Section 25-F, 25-N, 25-G, and 25-H of the Industrial Disputes Act, 1947 are not attracted in the present case. The petition is without any merit and liable to be rejected with exemplary cost in the interest of justice.

3. In order to prove the facts, alleged in the claim petition, workman has examined Sh. Rakesh Kumar as W, Sh. Jasmer as WW1 and Sh. Ram Kanwar as WW2 along with two retired employees of management Sh. Kewal Krishan Sharma as KK/1 and Prithvi Singh as PS/1. The statement of claimant Rakesh Kumar, Jasmer and Ram Kanwar are on the same line alleging therein that they were the regular employee of the management and performing their duties under the supervision and control of management from the year 1994 to 1998. The same fact is also alleged by the retired witness Kewal Krishan Sharma, bearing employee no.003466 and Prithvi Singh bearing employee no.541299. Witness Kewal Krishan Sharma and Prithvi Singh have specifically asserted that all the 12 claimants/workmen were posted from 1994 to 15.04.1999 for filling of LPG cylinders, cap opening, cap fixing, sealing, weighting valve change and testing them and remained continuous service till the management terminated their services without any reason. Witness Ram Kanwar, Rakesh Kumar and Jasmer have alleged in para 4 of their affidavits that the management Hindustan Petroleum Corporation Ltd. were keeping these workers either through Ram Phal or Jai Singh of Rajbir or Dharam or Hussain in order to defeat the provisions of Industrial Disputes Act, but none of them was issued any contractor's licence to keep these workers nor LPG plant at Asauda has issued any licence to keep workmen through contractor under Contract Labour Regulation from the Labour Department in the year 1994 to 1998 for the particular job being performed by them. Thus, the witnesses examined by the workmen has stated that they had been employed by the management itself and performing their duties regularly from the year 1994 to 1998 in the supervision of the management along with regular workmen.

4. The management has examined sole witness Krishan Gopal, who has proved his affidavit MW1 and valid Registration Certificate Ex.MW1/1 to engage contract labours as per Contract Regulation Act. Krishan Gopal has specifically admitted in para 3 of his affidavit that out of total petitioners/workmen only 7 were engaged by M/s. Ramphal during the period from 1995 to 1997 and M/s Jai Singh during 1997 to 1999. During the cross-examination, this witness has admitted that the work of loading, unloading washing of cylinder are done. He has stated that after loading the empty cylinders they are uncapped and defective cylinders are sorted out and after weighting empty cylinders the work of filling is done. He has admitted that all such functions are interconnected and all these functions are performed by different workmen regularly. He has admitted that he could not produce the attendance register relating to the year 1996. This witness has specifically denied that all the workmen are regular employees of the management and denied that they were terminated by the management. Thus, the evidence led by the parties reveals that at least 7 workmen namely Ramkanwar, Suresh, Raghuveer, Kuldeep, Shilak Ram and Jaismer are employed in the plant of respondent-management for the year 1994 to 1998.

5. Heard the arguments of learned counsel of workmen Sh. Ramesh Chopra and counsel for the management Sh. M.S. Rana and have carefully gone through the written argument and evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

6. The issue as to whether the workmen were engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workmen/claimants and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that period to show that he has worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gayda(2012) 1 SCC 47.

7. Question remains to be seen whether the workmen have proved that they were directly engaged under the respondent-management in the year 1994 and regularly continued till their termination. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single document to prove that workmen/claimants were directly employed by the respondent-management. In this connection, workman Ramesh and Ram Kanwar has accepted that neither any appointment letter nor any termination letter was issued by the respondent-management. Undoubtedly, witness examined by the respondent-management namely Krishan Gopal along with workmen have categorically stated in their evidence that they were employed by the management itself not by the contractor and the alleged contractors names are mentioned to defeat the provisions of the Industrial Disputes Act as they were not issued any contractors licence to keep these workmen in LPG Plant Assauda.

8. The Hon'ble Supreme Court after analysing the catena of cases has laid down in Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014, two well recognised tests to find out whether the labours are the contract employees of the principal employer are:-

- (1) Whether the principal employer pays the salary instead of contractor and
- (2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been stated in the claim petition of the workmen. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workmen namely Rakesh Kumar, Ram Kanwar have not mentioned anything regarding the mode of payment of wages, salaries etc. in their affidavits. Thus, this basic features for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workmen. In this connection, learned counsel for the workmen has contended that payment of salary was subject to the control and supervision of the management and virtually it was paid by the management as is alleged by the witness Ram Kanwar during the course of cross-examination by the management. I am not satisfied with the arguments of the learned counsel of the workmen as nothing is mentioned in pleading/claim petition as well as affidavits submitted by the witnesses in support of the claim petition. It is also pertinent to mention that nothing is on record in the form of documentary evidence that these workmen were directly paid by the management. It is surprising that none of the witness has stated in his affidavit about the amount of salary or wages payable to him either by the management or by the contractor. Thus, on this issue, firstly, it can be incurred that there is nothing on record to prove the factum of payment of salary by the management.

9. Secondly, so far as, the question of controls and supervision is concerned. Witnesses examined by the workmen have categorically stated that their works were supervised by the Supervisor of the management. Except this, nothing is brought on record to prove that it is management who were supervising and controlling the work of claimants. In fact, witness Rakesh and Ram Kanwar have stated in cross-examination that they have not any documentary evidence regarding the supervision by the management through his Supervisor. The apex court in the case of International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374] has held as follows:-

"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor."

"The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

10. Thus, the principal enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the claimants is mum on this score and witnesses examined by the claimants have not mentioned any specific averments in their affidavits regarding the appointment, authority of dismissal or taking of disciplinary action by the management. There is nothing on record to prove that it is the management who grants their leave or as authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the production of the work as alleged by the witnesses may not be called effective and absolute control. Such control is being emphasised to control the work of the management for a specific work inefficient manner done by the management in the establishment.

11. Learned counsel of workman placing reliance in the case of Secretary Haryana State Electricity Board Vs. Suresh & Oths. has contended that the alleged contractors have no valid licence to supply the contract labour to management and, management has got no licence to that end also. But, arguments advanced by the learned counsel have not found support from any cogent evidence. It is noteworthy that management has filed and proved the certificate of registration Ex.MW1/1 dated 13.02.1992 for any construction of LPG Bottling Plant initially which is reviewed again and again as per requirement for other works including bottling of cylinders. In the same way, papers attached with file A placed and relied by the workmen fortifies the contention of the management that only seven claimant/workmen

namely Ram Kanwar, Shatish, Rakesh, Suresh, Kuldeep Singh, Sheelek Ram and Jasmer had worked with the contractor Ram Phal and Jai Singh as their employees provided fund slips are attached with file for the period 1995 to 1999. There is nothing on record to prove that remaining claimant/workmen were associated with the management or contractors in relevant time. The licence of the contractors Ram Phal and Jai Singh are attached with the file A, relied by the workmen which reveals that Ram Phal had licence of competent authority for supply of 30 contract labour to the plant for housekeeping of Bottling Plants and cylinder handling of LPG Plant Asaudha for the year March 1995 to March 1998 which was renewed between the year. Similarly, Jai Singh contractor has valid licence for the same purpose for the year July 1998 to July 1999. To my mind, the work done by the workmen as alleged in claim petition and statement of the witnesses are inclusive of the handling and transportation of LPG Cylinders for which above named contractors have valid licence. Thus, the argument advanced by the learned counsel of workmen has no force and the case law cited above has no application being on different facts.

12. In lost limb of arguments, learned counsel of workmen has submitted that as per notification dated 21.10.1997 issued by the Government of India contract work by contractors were banned for all purpose where as claimant have worked till 1998. It is further argued that even if presumed that these workers had been supplied by contractors earlier even then after notification dated 21.10.1997, they shall be deemed to be employees of the management rendering services for more than 240 days preceding year before their termination. Unfortunately, this argument also finds no support from the notification dated 21.10.1997 in which appropriate government i.e. Government of India had prohibited the employment of contract labour in the works specified in the schedule annexed in the Liquid Petroleum Gas Plants Depots and Terminals of the Indian Oil Corporation Ltd. But the name of Asaudha Plant has find no place in the notification while name of Jammu, Hisar, Pathankot, Delhi, Kotkapura, Ambala, Patiala, Jallandhar and Sawai Madhopur have been specifically mentioned. Thus, this is not a general notification for all the Plants or depots of the Indian Oil Corporation Ltd. and argument advanced by the learned counsel of workmen has no force.

13. Question remains to be seen as workmen engaged in the Corporation were doing permanent and perennial nature of work. Workmen has mentioned in claim petition itself that they were doing work of capping of cylinders, sealing of cylinders, preparation of soap solution, sorting out defective cylinders, besides carrying of cylinders. The claimant Jasmer WW1 and Ram Kanwar WW2 has alleged in his affidavit submitted as evidence that they were contract workers only by name otherwise they were performing duties of loading and unloading functions of LPG cylinders along with putting seal cap on the cylinders, preparation of soap solution, sorting out defective cylinders. According to them, these jobs are of regular nature and cannot be entrusted to contractors. Retired witnesses of the management Kewal Krishan Sharma, KK/1 and Prithvi Singh PS/1 have also reiterated the same fact in his affidavit as well as during the cross-examination. The sole witness Sh. Krishan Gopal examined by the management have accepted during the cross-examination by the workmen-counsel that work of loading, washing of cylinder, capping, sealing of cylinder, refilling is done regularly. He has also accepted that these functions are performed by different persons and all the said functions are interconnected and performed by different persons. Thus, the cumulative evidence produced by the parties are of the same line and nature of work was permanent and perennial nature. In fact, Sh. Krishan Gopal has not asserted in his affidavit that what kinds of work were performed by the regular employees of the corporation. Similarly, this witness has not elaborated in his affidavit as to what specific work done by these claimants in the establishment of the corporation. The nature of work alleged to be performed in the plant is of same which was alleged to be done by the workmen in his claim petition as well as evidence of the witness examined by them. To my mind, these are the works which are of regular in nature and directly related with the production of the plant. It is pertinent to mention that there is nothing in writing on record to prove that what specific works were assigned to the claimants during the operation of the plant. As per respondent-management, only cylinder handling, loading/unloading, stocking, unstocking of cylinders are required to be done by these contractual labours for which contractor had licence from the competent authority. In fact, management has not adduced any document or evidence regarding the core activities of the plant for production and the nature of job assigned to their regular employees. Thus, I am of the opinion that the works performed by the claimants/petitioners were of permanent and perennial nature.

14. Undoubtedly, in Tribunal cases, has to be decided on the basis of preponderance of probability and not of proof of beyond reasonable doubts. In this connection, the oral evidence adduced by the workmen regarding contractors raises bona fide doubt about the claim of workmen. In claim petition, it is alleged that these workers were employed by the Ram Swaroop, thereafter, Ram Phal and Jai Singh. Ramswaroop is the father of Ram Phal regarding which there is no reliable evidence of his being contractor. Witness Rakesh has accepted during cross-examination that contractors Ram Swarop, Ram Phal and Jai Singh belongs to his village while remaining witnesses have alleged that they do not know these contractors. It appears that these witnesses are suspicious about the support of these contractors in his favour that is why neither they are made parties to the case nor summoned by the workmen to prove their case in spite of the specific case of the management that they are the workers of the contractors and not of the management.

15. So far as absorption directly by the Hindustan Petroleum Corporation Ltd. is concerned, the learned counsel of the claimants has contended that being a regular employee and doing permanent and perennial nature work of the Corporation, claimants are entitled for its absorption in the Corporation. The learned counsel for the management has contended that claimants have measurably failed to prove that they were directly employed by the Corporation for working in the establishment as such, their demand for absorption is neither justified nor legal. In this connection, learned counsel for the respondent-management has drawn my attention towards the judgment of *Steel Authority of India Ltd. Vs. National Union Water Front Workers 2001(4) S.C.T. Page I*, which is authority to the subject and the Supreme Court has specifically laid down that there was nothing to perceive in section 10 of the CLR Act any implicit requirement of automatic absorption of contract labour in the CLRA Act. It is noteworthy that there is specific provision in Section 12 of the CLRA Act regarding the licence of the contractors for supply of labour or worker in a particular

establishment. It is proved by the Corporation that the aforesaid contractors namely M/s. Ramphal and M/s Jai Singh had licence for supplying of labour for relevant period by the competent-authority. In fact, it is legally settled that any Corporation could succeed in any liability qua the workmen only if it is proved that the workmen were engaged by a licenced contractor and in the absence of contractor being a licenced contractor, the workmen are to be treated as a worker of the principal employer. Unfortunately, the said manpower contractors are not even made a party as respondent in the present case despite specific objection has been raised by the respondent-corporation so as to illicet from them qua the assertion made regarding the retrenchment or the alleged termination of the workmen. The appreciation of evidence on record reveals that there is no relationship between the workmen and respondent-corporation and it is not a corporation who had removed the claimants from service and it is a manpower contractors who have removed these workmen. In case, there is any cause of action/grievances of claimants, same accrues against the manpower contractors and not the respondent corporation. In view of the aforesaid discussion, I am of the opinion, that the claim of absorption in Hindustan Petroleum Corporation Ltd. by the claimants/workmen is neither justified nor legal. Hence, the workmen are not entitled for any relief.

16. In view of the legal position discussed above and due regard to the facts and circumstances of the case, this Court is of the view that workmen were the contractual employees in the respondent-management as such, their demand for absorption directly in the respondent-management is not legal and proper. In result, there is no merit in the case and the same is liable to be dismissed.

A. K. SINGH, Presiding Officer

नई दिल्ली, 14 मार्च, 2019

का. आ. 410.—ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स विरला सीमेन्ट कार्पोरेशन लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 14/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.03.2019 को प्राप्त हुआ था।

[सं. एल-29012/43/2016-आईआर(एम)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 14th March, 2019

S.O. 410.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 14/2017) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Birla Cement Corporation Limited and other and their workman, which was received by the Central Government on 06.03.2019.

[No. L-29012/43/2016-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 14/2017

Ref. No. L-29012/43/2016-IR(M) dated: 30.03.2017

BETWEEN :

Shri Santosh Kumar, S/o Kamlesh Kumar
R/o Village – Binohera Pure Tikai
Post – Nakpulha, Raibareli (UP)

AND

1. The Vice President
M/s. Birla Cement Corporation Limited
Cement Unit Amawan Road, Raibareli (UP)
2. The Factory Manager
M/s. Birla Cement Corporation Limited
Cement Unit Amawan Road, Raibareli (UP)

3. M/s. H. R. Contractors through
 M/s. Birla Cement Corporation Limited
 Cement Unit Amawan Road, Raibareli (UP)

AWARD

1. By order No. L-29012/43/2016-IR(M) dated: 30.03.2017 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute Shri Santosh Kumar, S/o Kamlesh Kumar, R/o Village – Binohera Pure Tikai, Post – Nakpulha, Raibareli (UP) and the Vice President, M/s Birla Cement Corporation Limited, Cement Unit Amawan Road, Raibareli (UP) & the Factory Manager, M/s Birla Cement Corporation Limited, Cement Unit Amawan Road, Raibareli (UP) & M/s H. R. Contractors through, M/s Birla Cement Corporation Limited, Cement Unit Amawan Road, Raibareli (UP) for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

“KYA BIRLA CEMENT CORPORATION LIMITED KI MANAGEMENT CEMENT IKAI, RAIBARELI, VA M/S H. R. CONTRACTORS RAIBARELI DWARA SHRI SANTOSH KUMAR S/O SHRI KAMLESH KUMAR, RAIBARELI KO DINANK 01/10/2014 KO NAUKARI SE NIKAAL DIYA JANA NYAYOCHIT EVEM VAIDH HAI? YADI NAHI, TO VAADI KIS RAHAT KO PANE KA HAKDAAR HAI?”

3. The order of reference was endorsed to the workman with direction to the party raising the dispute to file the statement of claim along with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10 (B) of the Industrial Disputes (Central), Rules, 1957.

4. The order of reference was registered in the Tribunal on 27.04.2017 and the office was directed to issue registered notice to the workman for filing the statement of claim with list of reliance & list of witnesses on 02.06.2017. On the date fixed i.e. 02.06.2017 the A/R workman was present; but did not file any statement of claim and prayed for another date for filing the statement of claim; accordingly, 18.07.2017 was fixed for filing the claim statement on behalf of the workman’s union.

5. The workman failed to file any statement of claim on subsequent dates i.e. 18.07.2017, 05.09.2017, 10.10.2017, 21.12.2017, 10.01.2018, 01.03.2018, 01.05.2018, 31.07.2018 and 30.10.2018. However on 17.12.2018, the date fixed for filing the statement of claim, the parties turned up and filed a settlement, W-5; whereby the workman agreed to withdraw the case on payment of compensation for Rs. 94570/- in lieu of gratuity, retrenchment compensation and one month’s notice pay. The workman prayed to withdraw the case accordingly.

6. Therefore, in view of settlement between the parties and prayer for withdrawal of the case, it appears there remains nothing to adjudicate upon in the case as no grievance is left with the workman. Resultantly no relief is required to be given to the workman concerned. The reference under adjudication is answered accordingly.

7. Award as above.

LUCKNOW.

31st January, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली 14 मार्च, 2019

का. आ. 411.—ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एसबीआई लाईफ इंश्योरेंस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ संख्या 64/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.03.2019 को प्राप्त हुआ था।

[सं. एल-17012/11/2016-आईआर(एम)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 14th March, 2019

S.O. 411.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 64/2016) of the Central Government Industrial Tribunal/Labour Court-2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. SBI Life Insurance and their workman, which was received by the Central Government on 06.03.2019.

[No. L-17012/11/2016-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 64/2016

Date of Passing Award- 30th January, 2019

Between:

Sone Lal Thakur
E-2/55, A, Second Floor Gali No.9,
Chanakya Place-2,
New Delhi-110059. ... Workman

Versus

1. SBI Life Insurance
Building No. 102-103, First Floor,
Old Rajender Nagar Market Opp. Axis Bank,
New Delhi-110060. ... Managements
2. SBI Life Insurance
Third Floor, Parsavanth Metro Tower,
Near Shahdra Metro Station,
New Delhi- 110032.

Appearances :

Workman in person	: For the Workman
Smt. Vandana Surana Advocate	: for the Management

AWARD

The Government of India in the Ministry of Labour & Employment has referred the present dispute existing between the employer in relation to the management of SBI Life Insurance and its workman i.e. the claimant under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter no. L-17012/11/2016 (IR(M)) dated 09.06.2016 to this tribunal for adjudication to the following effect.

“Whether the action of the management SBI Life Insurance Co. Ltd., in terminating the services of Sh. Sone Lal Thakur is just fair and legal? If not, to what relief the workman is entitled to and from which date?”

The 2nd party workman has filed his statement of claim alleging that he had joined service of the 2nd party management on 1st July 2010 as Unit Manager. In the year 2012 for his work performance, got double promotion as Senior Agency Manager and again in 2013 as Territory Manager. His performance with the management was unblemished. Suddenly in the month of December his salary was not credited to his account. Enquiry being made with the HR department he was told to contact the Regional Director. The workman 1st party then wrote letter to the Regional Director and Regional Sales Manager. After 8 Months in August 2015 the termination letter with vague ground was served on him. No statutory provisions were followed nor any compensation for termination of service was paid. The 1st party workman then approached the Deputy Chief Labour Commissioner (Central), New Delhi for redressal of his grievance. Though conciliation proceeding started the same did not yield any result. On the contrary the Appropriate Government referred the Industrial Dispute to this Tribunal. The workman thus, filed the claim statement demanding payment of long term

service award, full salary till date of award, other allowances, gratuity etc., amounting to Rs. 16,94,083/- to be paid by the management.

Being noticed the 2nd party management appeared and filed written statement refuting the stand of the workman. It is the specific stand of the management that the 1st party was appointed as the Unit Manager and his job was to supervise 30 to 50 agents. The Unit Manager is required to possess high quality skills of management. Thus, the 1st party is not a workman within the meaning of section 2(s) of the ID Act. Not only that the workman was drawing a monthly salary of Rs 33,522/- and has exceeded upper limit of salary prescribed u/s 2(S) (iv) of the ID Act. By citing the case of Chauhaarya Tripathi and Others vs. LIC of India decided by the Hon'ble Supreme Court in Civil Appeal No. 5690 of 2010 the 2nd party management submitted that the 1st party not being a workman the proceeding is not maintainable. The other stand of the second party management is that for the misconduct in service shown by the workman, his service was terminated after following due procedure and this tribunal has no jurisdiction to interfere with the same.

The workman had filed several documents in support with his stand which included his appointment letter salary slip, etc. Considering the pleadings of the parties the following issues were framed for adjudication.

ISSUES

1. Whether the claim is not legally tenable.
2. In terms of reference.

During the subsequent stage of proceeding the workman did not appear nor filed any oral or documentary evidence. The management also did not file any oral or documentary evidence. However, he placed reliance in the case of Chauhaarya Tripathi and Others vs. LIC of India refers Supra.

FINDINGS

ISSUE NO. 1

It is the admitted state of fact that the 1st party was working as a territory manger at the time of alleged termination which is evident from the document filed by the 1st party, and thus, does not fit into the definition of the workman as mentioned u/s 2(S)(iv) of the ID Act. There being no dispute and admitted by the 1st party that he was working in a managerial capacity with the management before his termination, the provisions of industrial dispute act are not applicable for redressal of his grievance. Accordingly the issue no.1 is answered against the 1st party and it is held that the proceeding is not maintainable before this tribunal.

ISSUE NO. 2

In view of the finding in respect of the issue no.1, it is held that the 1st party is not entitled to any benefit in terms of the reference.

This reference is accordingly answered.

Dictated & Corrected by me.

Smt. PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 मार्च, 2019

का. आ. 412.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मानथन माइनिंग कार्पोरेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 199/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.03.2019 को प्राप्त हुआ था।

[सं. एल-29012/82/1999-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 14th March, 2019

S.O. 412.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 199/1999) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mandhan Mining Corporation and their workman, which was received by the Central Government on 11.03.2019.

[No. L-29012/82/1999-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**In the matter of reference U/S 10 (1)(d) (2A) of I.D.Act, 1947.**Reference No. 199/1999****Employer in relation to the management of M/s. Mandhan Mining Corporation****AND****Their workman****Present :** Shri D.K. Singh, Presiding Officer**Appearance:**

For the Employers : None

For the workman : None

State: Jharkhand Industry- Coal
Dated: 28.02.2019**AWARD**

By order No. L-29012/82/1999-IR(M) dated 26/11/1999, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub – section (1) and sub – section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether ShriSakun Roy has left the services of M/s. Mandhan Mining Corporation in the year 1996 on his own accord? If not, whether the action of the employer in terminating the workman in the year 1996 is justified? If not, to what relief the workman is entitled?”

2. After receipt of the reference, both parties were noticed but both parties failed to appear before this Tribunal. Subsequently two regd. Notices were issued but even then none of the parties appeared. Case is pending since long so, it appears that the workmen has lost his interest to resolve the matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 14 मार्च, 2019

का.आ. 413.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ओ.एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 182/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.03.2019 को प्राप्त हुआ था।

[सं. एल-30011/6/1998-आईआर(एम)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 14th March, 2019

S.O. 413.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 182/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Limited and others and their workman, which was received by the Central Government on 13.03.2019.

[No. L-30011/6/1998-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 19th February, 2019

Reference: (CGITA) No- 182/2004

1. The Executive Director,
ONGC Ltd.,
WRBC, Makarpura Road,
Baroda (Gujarat) – 390009
 2. M/s. Swastik Majdoor Kamdar Sahakari Mandli Ltd.,
Sardar Shopping Centre, Near Congress House,
Mehsana (Gujarat) - 384001
 3. M/s. Multipurpose Manpower Management Services Pvt.,
1st Floor, Tapasvi Chambers, Opposite Sagar Dairy, Highway Road,
Mehsana (Gujarat) - 384002
 4. M/s. Public Power Majdoor Kamdar Sahakari Mandli Ltd.,
Opposite Dudsagar Dairy, Highway Road,
Mehsana (Gujarat) - 384002
 5. M/s. Adarsh Majdoor Kamdar Sahakari Mandli Ltd.,
Near Gayatri Mandir, Highway Road,
Mehsana (Gujarat) – 384002
 6. M/s. Chanasma Taluka Majdoor Kamdar Sahakari Mandli Ltd.,
C/o Gandhi Printers, Opposite B.K. Cinema,
S.T. Workshop Road,
Mehsana (Gujarat) – 384002
 7. The Group General Manager (Projects),
ONGC Ltd., Mehsana Project, Palavasna,
Mehsana (Gujarat) – 384002
- ...First Parties

V/s

The Secretary,
ONGC Labour Union,
8, Samarpan Shopping Complex, Highway Road,
Mehsana (Gujarat)

...Second Party

For the First Party : Shri K.V. Gadlia
For the Second Party : Shri Yogen Pandya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/6/98-IR(M) dated 22.03.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether ONGC Labour Union is justified in demanding absorption/regularisation of workmen as per list annexed w.e.f. the date of their appointment or 08.09.1994 whichever is later, as the workmen are working on prohibited category in terms of Notification No. U-23013/4/92-LW dated 08.09.1994 and S.O. No. 779(E) dated 07.12.1976 issued by Government of India? If so, to what relief the concerned workmen are entitled to?”

1. The reference dates back to 22.03.1999 and received on 26.03.1999 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. After issuing of notice to the parties, the second party submitted the statement of claim Ex. 4 along with application for interim relief Ex. 6. The first party no. 4 submitted the written statement Ex. 18 and the first party ONGC Ltd. submitted the written statement Ex. 27.

3. The second party union The Secretary, ONGC Labour Union, 8, Samarpan Shopping Complex, Highway Road, Mehsana, hereinafter referred to as "union" has alleged in the statement of claim that the aforesaid reference was referred to this Tribunal by the Ministry of Labour and Employment, Government of India, New Delhi under the direction of the Hon'ble High Court of Gujarat in Special Civil Application (SCA) No. 2574/1998 concerning the 61 workmen related to the first party ONGC, Mehsana, hereinafter referred to as "ONGC". The High Court while passing the said order protected the services of aforesaid 61 workmen by way of maintaining status quo. The second party union The Secretary, ONGC Labour Union, 8, Samarpan Shopping Complex, Highway Road, Mehsana is a registered trade union and the concerned workmen are the members thereof. These workmen alleged to have been working under the prohibited category. The first party ONGC, Mehsana has been engaged in drilling operations for extracting mineral oil and natural gas. These workmen have been working under the direct supervision and control of the first party ONGC, Mehsana. It has been further alleged that ONGC started hiring vehicles like Jeeps, Trucks, Buses, Cranes and Trailers etc. replacing the condemned vehicles of ONGC. It has been further alleged that the Mehsana Project of ONGC and its activities are being supervised and controlled by the Executive Director. It is covered under the Mines Act, 1952. Contractual workers are being assigned duties on the various jobs like telephone operations, instrument technicians and wireless operations. The transport division of ONGC, Mehsana has been headed over by Chief Manager (Logistic) divided in number of departments. It is responsible for transportation of men and materials spread over operation business, drilling business, exploration business, technical business and co-ordination group etc. ONGC has been providing the concerned contractual workmen, fuels, spare parts etc. These workmen have been working under the direct control and supervision of ONGC for all intent and purposes like attendance and absence, if any, is being marked by the officers of ONGC and the contractors were namesake and created by the ONGC to deprive by the ONGC by labelling them as contract workers. The notifications dated 09.12.1976 and 08.09.1994 are also filed. It has been further alleged that the first party ONGC used to invite tenders from the labour contractors and the lowest bidder used to be awarded the labour contract. It is further alleged that the persons detailed in Annexure A have been working for ONGC which has been earning profit in ONGC and the work was of perennial nature. It has been further alleged that the concerned workmen have been working on the post of prohibited category under the aforesaid notifications, therefore, they cannot be read as contractual labourers and being in the prohibited category, they are entitled for regularisation on the said post with a compensation of Rs.25000/- per annum for all the years from the date of appointment.

4. The workmen also moved an interim application Ex. 6 for grant of interim stay which was allowed by the then Presiding Officer granting the status quo till the disposal of reference.

5. The first party ONGC filed preliminary objections Ex. 14 to frame the preliminary issue and the second party submitted the objection Ex. 15. The application Ex. 14 was rejected by the Tribunal. The ONGC preferred Special Civil Application (SCA) No. 1726 of 2001 in the Hon'ble High Court wherein the High Court granted stay against the said order of rejection which was finally decided on 29.12.2004.

6. The first party ONGC submitted the written statement Ex. 27 denying all the allegations made in the statement of claim submitting that ONGC has been awarding various casual seasonal jobs on contract to the contractors after following the due process of tender. There has been no master-servant relationship between the ONGC and concerned workmen. Contractors have been employing them as per requirement. They have not been doing permanent and perennial nature of job, therefore, cannot be equated with the regular employees of ONGC. They have been doing the job under the control and supervision of contractors as per the requirement of tenders granted to contractors. These workmen have also not been subjected to administrative, financial or disciplinary action by the ONGC. In case these workmen were regularised, it would be called as back door entry. These workmen have not been working under prohibited category. The notifications dated 09.12.1976 and 08.09.1994 have been challenged in the Hon'ble High Court. Thus the prayers sought by the workmen cannot be granted and the reference is liable to be dismissed.

7. The second party examined three witnesses namely Solanki Madhusudan Ranchhodhbhai, cleaner/helper vide Ex. 43, Parmar Shailesh Kantilal, attendant in E & C department vide Ex. 44 and Parmar Mukesh Murarbhai, attendant/helper vide Ex. 45.

8. After the completion of evidence of both the parties, ONGC Employees Mazdoor Sabha, Mehsana vide application Ex. 47, 48, 49 and 50 prayed for deletion of 12 workmen, the names of them are as under:

Serial No.	Name of the Workman	Serial No. in the list annexed with the Schedule of Reference
1.	Makwana Bipinbhai Kantibhai	03
2.	Maheshkumar Laljibhai Makwana	04
3.	Mahendrabhai Ranchhodhbhai Parmar	05
4.	Sureshbhai Joitaram Chauhan	21

5.	Arun Brahmashankar Shukla	22
6.	Jitendrakumar Ramabhai Parmar	24
7.	Gandhi Hasmukhlal Mohanlal	28
8.	Mulchandbhai Parmar	41
9.	Baldevji Galabji Thakor (Darbar)	42
10.	Thakor Velaji Shivaji	57
11.	Kalaji Manaji Thakor	58
12.	Dineshbhai Ranchhodhbhai Raval	59

The names of aforesaid 12 workmen were, therefore, deleted from the reference as prayed by them vide order dated 23.10.2018.

9. On the basis of the pleadings, the following issues arise:

- i. Whether ONGC Labour Union is justified in demanding absorption/regularisation of workmen as per list annexed w.e.f. the date of their appointment or 08.09.1994 whichever is later, as the workmen are working on prohibited category in terms of Notification No. U-23013/4/92-LW dated 08.09.1994 and S.O. No. 779(E) dated 07.12.1976 issued by Government of India?
- ii. To what relief, if any, the concerned workmen are entitled?

10. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party. The witnesses namely Solanki Madhusudan Ranchhodhbhai, cleaner/helper vide Ex. 43, Parmar Shailesh Kantilal, attendant in E & C department vide Ex. 44 and Parmar Mukesh Murarbai, attendant/helper vide Ex. 45 reiterated the averments made in the statement of claim in their examination-in-chief but in their cross-examination, they have stated that they have not been given any appointment letter by ONGC. Wages were credited in their bank account by the contractor and provident fund was also deducted by the contractor from their wages. Their wages were paid on the basis of day to day basis.

11. The first party did not examine any witness.

12. The second party union has prayed for regularisation of workmen on the ground that they have been working for a long period under the prohibited category given in notifications dated 09.12.1976 and 08.09.1994 but the first party has argued that the said notifications were challenged in the Uttrakhand High Court in Writ Petition (M/S) No. 1323 of 2013, ONGC Dehradoon V/s Union of India and the Uttrakhand High Court vide judgement dated 15.02.2018 quashed the notification dated 08.09.1994. The notification dated 09.12.1976 was also of similar nature and the notification dated 08.09.1994 was issued in continuation of notification dated 09.12.1976. Therefore, after quashing the notification dated 08.09.1994 by the Uttrakhand High Court, these workmen being the contractual labours cannot be absorbed or regularised despite the fact that they have been working for a long time. It has been admitted by the workmen in their evidence that they were engaged by the contractor and the wages were also paid by the contractor.

13. Had these workmen been regularised or absorbed despite the fact that they were admittedly contractual labours, such recruitment absorption would be called back door entry as the ONGC being the State Instrumentality is bound by the due procedure of recruitment.

14. Thus the reference has no force and liable to be dismissed. Both the issues are decided accordingly. The second party workmen are not entitled for any relief.

15. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 14 मार्च, 2019

का.आ. 414.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ओ.एन.जी.सी. लिमिटेड के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुवंश में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 57/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.03.2019 को प्राप्त हुआ था।

[सं. एल-30012/31/2008-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 14th March, 2019

S.O. 414.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 57/2010) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Limited and their workman, which was received by the Central Government on 13.03.2019.

[No. L-30012/31/2008-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 18th February, 2019

Reference: (CGITA) No. 57/2010

- | | |
|---|-------------------|
| <p>1. The Group General Manager (P),
ONGC Ltd., Ankleshwar Project Ankleshwar,
Bharuch (Gujarat) - 390018</p> <p>2. The Chief Manager (P&A),
ONGC Ltd., Tel. Bhavan,
Dehradun (Uttarakhand)</p> | ... First Parties |
|---|-------------------|

V/s

- | | |
|---|-----------------|
| <p>Shri Ranjitbhai Naginbhai Vasava,
Near Neelkanth Mandir,
Valmkinagar, Opp. Seva Ashram,
Bharuch (Gujarat) - 392001</p> | ...Second Party |
|---|-----------------|

For the First Parties : Shri C.S. Naidu
For the Second Party : Shri V.K. Kazi

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/31/2008-IR(M) dated 29.01.2009 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd., Ankleshwar Asset, Ankleshwar in terminating the services of Shri R.N. Vasava, Fireman Grade-II by way of struck-off his name from the muster roll w.e.f. 11.12.2002 vide order dated 10.07.2003 is legal, proper and just? What relief the concerned workman is entitled to?”

1. The reference dates back to 29.01.2009 and received on 10.02.2009 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. After issuing of notice to the parties, the second party submitted the statement of claim Ex. 6 on 23.06.2009 and the first party ONGC Ltd. submitted the written statement Ex. 15 on 26.11.2013.
3. Both the parties submitted the settlement Ex. 16 and 17 stating that the matter has been settled amicably between the parties and the first party ONGC Ltd. has paid Rs.53215.96/- to the widow named Kapilaben Ranjitbhai Vasava of the deceased workman named Ranjit N. Vasana as full and final settlement vide demand draft no. 775507 dated 15.02.2019 which the widow of the deceased second party workman has accepted.
4. Thus the reference is disposed of in terms of settlement Ex. 16 and 17. The settlement Ex. 16 and 17 shall remain the part of award.
5. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 14 मार्च, 2019

का.आ. 415.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ओ.एन.जी.सी. लिमिटेड के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 390/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.03.2019 को प्राप्त हुआ था।

[सं. एल-30012/7/2001-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 14th March, 2019

S.O. 415.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 390/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Limited and their workman, which was received by the Central Government on 13.03.2019.

[No. L-30012/7/2001-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 12th February, 2019

Reference: (CGITA) No. 390/2004

1. The Group General Manager (P),
ONGC Ltd., Ahmedabad Project,
Avani Bhavan, Chandkheda,
Ahmedabad (Gujarat) - 380001
 2. M/s. Industrial Security Services,
Parichay Shopping Centre,
Near D Cabin, IOC Road, Post New Railway Colony,
Ahmedabad (Gujarat) – 380001
- ...First Parties

V/s

Shri Dinesh L. Shrinmali,
C/o Akhil Gujarat Kamdar Seva Mandal,
10, Shakty Shopping Centre, 2nd Floor, Vepari Gir Kalol,
Mehsana (Gujarat)

...Second Party

For the First Parties : Shri C.S. Naidu
For the Second Party : Shri Prabhatsinh Parmar

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/7/2001-IR(M) dated 10.05.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of Shri Dineshbhai Laxmanbhai Shrimali for reinstatement w.e.f. 12.06.2000 with full back wages and continuity of service and all other benefits of permanent workman of ONGC Ltd., instead of contractual worker of M/s. Industrial Security Services which is according to him a sham contract, is justified? If so, what relief the concerned workman is entitled to?”

1. The reference dates back to 10.05.2001 and received on 22.05.2001 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. After issuing of notice to the parties, the second party submitted the statement of claim Ex. 12 and the first party ONGC Ltd. submitted the written statement Ex. 14.

3. The second party workman Dineshbhai Laxmanbhai Shrimali, hereinafter referred to as 'workman' in his statement of claim Ex. 12 has alleged that he was appointed on 21.11.1990 by the first party ONGC Ltd., hereinafter referred to as 'ONGC' on the post of Khalasi/Peon in furtherance of a advertisement made by ONGC after undergoing the due selection procedure. Initially, he was posted on the post of Khalasi on probation basis for carrying out the ONGC's laboratory work. He served for more than 10 years continuously with an average of 240 days in every calendar year but he was not issued any appointment letter. He never worked under the direct control of first party no. 2 the contractor M/s Industrial Security Services, hereinafter referred to as 'ISS'. It is further alleged that he never committed any misconduct but his services were verbally terminated on 12.06.2000 in violation of provisions of Section 25 F, G and H of the Industrial Disputes Act. Therefore, he has prayed that his termination by the ONGC through contractor M/s Industrial Security Services w.e.f. 12.06.2000 be declared as illegal and be reinstated on his original post with continuity of service and benefits since the date of termination of his service.

4. The first party ONGC Ltd. in his written statement Ex. 14 denied the averments made in the statement of claim and submitted that this workman was engaged by the first party no. 2 M/s Industrial Security Services to perform the contract work assigned to the contractor by the ONGC, therefore, this workman was not a employee of ONGC and ONGC has no liability regarding the prayer sought by the workman as there was no master-servant relationship between the ONGC and the workman.

5. On the basis of the pleadings, the following issues arise:

- i. Whether the demand of Shri Dineshbhai Laxmanbhai Shrimali for reinstatement w.e.f. 12.06.2000 with full back wages and continuity of service and all other benefits of permanent workman of ONGC Ltd., instead of contractual worker of M/s Industrial Security Services which is according to him a sham contract, is justified?
 - ii. To what relief, if any, the concerned workman is entitled?
6. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman who submitted his affidavit Ex. 26 reiterating the averments made in the statement of claim. However, in his cross-examination, he has stated that he was engaged by the first party no. 2 ISS. He was never appointed by ONGC. He was terminated from service by ISS on 12.06.2000. ISS has also paid him all the dues for the work he did till the date of termination. ONGC never issued him any appointment letter. The workman further submitted his additional affidavit Ex. 30 wherein he has, by mistake, stated the date of termination as 26.06.1999 which was in fact 26.12.1999.

7. The ONGC submitted the affidavit Ex. 29 of one Vikas Bhargava, Chief Engineer (Production), who reiterated the averments made in the written statement but he did not appear for cross-examination.

8. The first party no. 2, the contractor M/s Industrial Security Service despite service did not prefer to submit the written statement, therefore, the reference proceeded ex parte against the contractor ISS.

9. I perused the evidence and heard the arguments of both the parties. As admitted by the witness of ONGC named Vikas Bhargava, the workman worked without any complaint till the date of his termination as a contract labour and the contractor ISS did not prefer to explain his case as to why this workman was terminated. It has also been told that the contractor has left the ONGC as being black listed by the ONGC and the witness of ONGC did not find any misconduct regarding the workman, therefore, it would be appropriate that ONGC may be directed to order the present contractor, whosoever he may be, to engage this workman named Dineshbhai Laxmanbhai Shrimali within 30 days from the publication of the award. The ONGC shall not have any master-servant relationship with the workman and will also have no liability regarding wages in case the ONGC get this workman engaged/re-employed with the present contractor as per the Minimum Wages Act.

10. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 14 मार्च, 2019

का.आ. 416.—ऑद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ओ.एन.जी.सी. लिमिटेड के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 381/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.03.2019 को प्राप्त हुआ था।

[सं. एल-30011/19/2001-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 14th March, 2019

S.O. 416.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 381/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Limited and their workman, which was received by the Central Government on 13.03.2019.

[No. L-30011/19/2001-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 12th February, 2019

Reference: (CGITA) No. 381/2004

- 1. The Chief Engineer,
ONGC Ltd.,
Civil Section, Ahmedabad Project, Avani Bhavan,
Chandkheda, Ahmedabad (Gujarat)
- 2. M/s. Industrial Security Services,
Parichay Shopping Centre,
Near D Cabin, IOC Road, Post New Railway Colony,
Ahmedabad (Gujarat) – 380001
- 3. The Group General Manager (P),
ONGC Ltd., Ahmedabad Project,
Avani Bhavan, Chandkheda,
Ahmedabad (Gujarat) ...First Parties

V/s

The General Secretary,
Gujarat Petroleum Employees Union,
434/36, Gandhivas Koba Road, Sabarmati,
Ahmedabad (Gujarat) ...Second Party

For the First Parties : Shri C.S. Naidu
For the Second Party : Shri Prabhatsinh Parmar

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/19/2001-IR(M) dated 21.03.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd., is justified in terminating the services of Shri Rana Kanubhai Bhikabhai Khalasi through contractor M/s Industrial Security Services w.e.f. 02.08.1999? If not, what relief the concerned workman is entitled?”

- 1. The reference dates back to 21.03.2001 and received on 01.04.2001 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
- 2. After issuing of notice to the parties, the second party submitted the statement of claim Ex. 7 on 13.10.2003 and the first party ONGC Ltd. submitted the written statement Ex. 12 on 22.09.2005.
- 3. The second party workman Rana Kanubhai Bhikabhai, hereinafter referred to as ‘workman’ in his statement of claim Ex. 7 has alleged that he had been working as Khalasi in the Heavy Transport Section, Sabarmati of the first party ONGC Ltd., hereinafter referred to as ‘ONGC’ under a sham arrangement of contract since April, 1992 continuously without any interruption on Rs.2000/- per month as wages but he never saw the so-called contractor M/s Industrial Security Services, hereinafter referred to as ‘ISS’ or its representative at the work place. The work was of permanent nature regarding drilling of wells. He was engaged on compassionate ground as his father Bhikabhai A. Gola (Rana) Khalasi CPF No. 30692 was also working in the same section who died on 06.03.1992. It is further alleged that he never committed any misconduct but his services were verbally terminated on 02.08.1999 in violation of provisions of Section

25 F, G and H of the Industrial Disputes Act. Therefore, he has prayed that his termination by the ONGC through contractor M/s. Industrial Security Services w.e.f. 02.08.1999 be declared as illegal and be reinstated on his original post with continuity of service and benefits since the date of termination of his service.

4. The second party workman has submitted the death certificate of his father dated 20.07.1992, copy of the office order fixing the pay of the workman's father, list of workers, school certificate etc.

5. The first party ONGC Ltd., hereinafter referred as 'ONGC' in his written statement Ex. 12 denied the averments made in the statement of claim and submitted that this workman was engaged by the first party no. 2 M/s Industrial Security Services to perform the contract work assigned to the contractor by the ONGC, therefore, this workman was not an employee of ONGC and ONGC has no liability regarding the prayer sought by the workman as there was no master-servant relationship between the ONGC and the workman.

6. On the basis of the pleadings, the following issues arise:

- i. Whether the action of the management of ONGC Ltd., is justified in terminating the services of Shri Rana Kanubhai Bhikabhai Khalasi through contractor M/s Industrial Security Services w.e.f. 02.08.1999?
- ii. To what relief, if any, the concerned workman is entitled?

7. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman who submitted his affidavit Ex. 14 reiterating the averments made in the statement of claim. However, in his cross-examination, he has stated that he was terminated from service by ISS on 02.08.1999. ISS has also paid him all the dues for the work he did till the date of termination. ONGC never issued him any appointment letter.

8. The ONGC submitted the affidavit Ex. 17 of one Kishor Kishanchand Gehani, Chief Manager (Logistic), who reiterated the averments made in the written statement but in his cross-examination, he has stated that this workman worked in the ONGC as a contract labour. There was no complaint regarding his work from 1989 to 1999. As he was contract labour, therefore, ONGC cannot commit his re-engagement.

9. The first party no. 2, the contractor M/s Industrial Security Service despite service did not prefer to submit the written statement, therefore, the reference proceeded ex parte against the contractor ISS.

10. I perused the evidence and heard the arguments of both the parties. As admitted by the witness of ONGC named Kishor Kishanchand Gehani, the workman worked without any complaint since 1989 to 1999 till the date of his termination as a contract labour and the contractor ISS did not prefer to explain his case as to why this workman was terminated. It has also been told that the contractor has left the ONGC as being black listed by the ONGC and the witness of ONGC did not find any misconduct regarding the workman. Therefore, it would be appropriate that ONGC may be directed to order the present contractor, whosoever he may be, to engage this workman named Rana Kanubhai Bhikabhai within 30 days from the publication of this award. However, the ONGC shall not have any master-servant relationship with the workman and will also have no liability regarding wages in case the ONGC get this workman engaged/re-employed with the present contractor as per the Minimum Wages Act.

11. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 14 मार्च, 2019

का.आ. 417.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 77/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.03.2019 प्राप्त हुआ था।

[सं. एल-41011/64/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 14th March, 2019

S.O. 417.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 77/2012) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of North Eastern Railway and their workmen, received by the Central Government on 14.03.2019.

[No. L-41011/64/2012-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW****PRESENT : RAKESH KUMAR, Presiding Officer****I.D. No. 77/2012****Ref. No. L-41011/64/2012-IR(B-I) dated: 20.09.2012****BETWEEN :**

Shri Om Prakash Srivastava
 S/o late Shri Bachchha Prasad
 R/o L/74, North Eastern Railway Loco Colony
 Mavya, Lucknow.

AND

1. Divisional Railway Manager (Personnel)
 North Eastern Railway
 DRM Office, Ashok Road, Lucknow
2. Sr. Divisional Electrical Engineer
 Lucknow Junction, Lucknow.
3. Sr. Section Engineer Electrical (A/C)
 Lucknow Junction, Lucknow.

AWARD

1. By order No. L-41011/64/2012-IR(B-I) dated: 20.09.2012 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Om Prakash Srivastava, S/o late Shri Bachchha Prasad, R/o L/74, North Eastern Railway Loco Colony, Mavya, Lucknow and Divisional Railway Manager (Personnel), North Eastern Railway, DRM Office, Ashok Road, Lucknow & Sr. Divisional Electrical Engineer, Lucknow Junction, Lucknow & Sr. Section Engineer Electrical (A/C), Lucknow Junction, Lucknow for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF NORTH EASTERN RAILWAY, LUCKNOW IN NOT PROMOTING SHRI OM PRAKASH S/O LATE SHRI BACHACHHA SINGH BY ALLOWING HIM BENEFIT OF SENIORITY FROM 1987 AND PROMOTING HIS JUNIORS, IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE CONCERNED WORKMAN IS ENTITLED?"

3. The workman, Om Prakash has raised the present industrial dispute claiming seniority from 1987 and other consequential benefits. The management of the railways denied the claim by filing a detailed written statement, stating therein that the claim of the workman does not sustain in light of relevant Rules; and it has prayed that the claim of the workman is liable to be rejected without any benefit to the workman concerned.

4. The workman, in its rejoinder, reiterated its contentions already made in the statement of claim. The management filed documentary evidence in support of its pleading; whereas the workman did not file any document in support of its claim; and the date was fixed for evidence of the workman, which he did not file in spite of several opportunities being afforded to him.

5. However, during the course of proceedings on 09.10.2018 the workman moved an application, W-21 for withdrawal of the case, which was not objected by authorized representative of the management.

6. Therefore, in view of application, W-21 of the workman for withdrawal of the case and no opposition from the management, it appears there remains nothing to adjudicate upon in the case as no grievance left with the workman. Resultantly no relief is required to be given to the workman concerned. The reference under adjudication is answered accordingly.

7. Award as above.

LUCKNOW.

31st January, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 14 मार्च, 2019

का.आ. 418.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ संख्या 13/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.03.2019 को प्राप्त हुआ था।

[सं. एल-41012/15/98-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 14th March, 2019

S.O. 418.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2005) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court*, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 14.03.2019.

[No. L-41012/15/98-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 20th February, 2019

Reference: (CGITA) No. 13/2005

- 1. The Divisional Railway Manager,
Western Railway,
Divisional Office, Kothi Compound,
Rajkot (Gujarat) – 360001
 - 2. The Dy. Chief Engineer (Construction),
Western Railway, B.G. Station Building,
2nd Floor, PO Railwaypura,
Ahmedabad (Gujarat) - 380002
- ...First Parties

V/s

The President,
Saurashtra Employees Union,
Umesh Commercial Complex, Office No. 213 and 214,
2nd Floor, Near Chaudhary High School,
Rajkot (Gujarat) - 360001

...Second Party

For the First Parties : Shri H.R. Raval
For the Second Party : Shri B.B. Gogia

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/15/98-IR(B-I) dated 11.01.2005 referred the dispute for adjudication to the Central Govt. Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Western Railway in terminating the service of Shri Anup Singh w.e.f. 30.06.1987 is justified? If not, to what relief the workman concerned is entitled?”

1. The reference dates back to 11.01.2005 and received on 20.01.2005 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. After issuing notice to the parties, second party workman submitted the statement of claim Ex. 3 on 23.03.2005. On 04.07.2011, the second party workman submitted the application for amendment in the statement of claim vide list Ex. 9 along with list of documents vide list Ex. 10 on 04.07.2011.

3. The second party workman submitted the affidavit Ex. 11 on 07.06.2011 reiterating the averments made in the statement of claim. Thereafter, the first party submitted the written statement Ex. 12 on 07.02.2014. Since then the second party workman has not been leading evidence and his advocate Shri B.B. Gogia vide application Ex. 14 dated 14.05.2018 informs that the second party workman has taken the file from his custody, therefore, he withdrew his vakalatnama on behalf of the second party workman. Since 14.05.2018, the second party workman has neither been appearing nor has engaged any advocate to lead his evidence.

4. Thus it appears that the second party workman is not willing to prosecute the case.

5. Therefore, the reference is disposed of in the absence of the evidence of the second party workman with the observation as under: “the action of the management of Western Railway in terminating the service of Shri Anup Singh w.e.f. 30.06.1987 is justified.”

6. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 14 मार्च, 2019

का.आ. 419.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सोनाली बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, कोलकाता के पंचाट (संदर्भ संख्या 08/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.03.2019 को प्राप्त हुआ था।

[सं. एल-12012/29/2006-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 14th March, 2019

S.O. 419.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2006) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Kolkata* as shown in the Annexure, in the industrial dispute between the management of Sonali Bank and their workmen, received by the Central Government on 14.03.2019.

[No. L-12012/29/2006-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 08 of 2006

Parties: Employers in relation to the management of Sonali Bank

AND

Their workmen

Present : Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. Avijit Dasgupta, Executive Committee member of Bank Employees Federation, West Bengal.

On behalf of the Workmen : Non

State: West Bengal.

Industry: Banking

Dated: 27th February, 2019

AWARD

By Order No.L-12012/29/2006-IR(B-I) dated 23.03.2006 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of management of Sonali Bank, Kolkata in absorbing S/Shri Sumanta Mukherjee and Md. Noor Alam, Clerks ignoring the claim of three senior clerks viz, S/Shri Ashok Saha, Subrata Mitra and Abdul Momin who are senior to them is justified? If not, to what relief the concerned workmen are entitled to?”

2. Brief facts as set forth in the statement of claim are that S/Shri Ashok Saha, Subrata Mitra and Abdul Momin were appointed to the posts in the clerical cadre of Sonali Bank at its Kolkata Branch on 15th March, 1995, 24th April, 1997 and 27th March, 1998 respectively for performing clerical duties of permanent and perennial nature. However, the

bank did not issue any written order/letter of appointment to them while recruiting them in service. The Bank also did not allow them to record their day-to-day attendance to duties like other regular employees of the bank by signing daily attendance register. Instead of paying scale wages, allowance and other benefits application to clerical cadre post, the bank used to pay them only a pittance of consolidated daily wage varying from time to time between Rs.100 to Rs.150 only for the actual working days with wage for the weekly off and other public or bank holidays. The amount was paid as daily wages to them were charged to the "Charges A/c Salaries and Allowances" and also entered in the "Charges Register". The bank used to pay the said amount to them in cash instead of depositing the same to the credit of their bank accounts as in the case of other bank employees. S/Shri Ashok Saha and Subrata Mitra appointed by direct recruitment continued to be employed and as such discharged and performed the duties of clerical post on the same terms and conditions continuously and uninterruptedly till 2nd April, 2006, 8th January, 2006 and 2nd January, 2006 respectively. Thereafter the bank by an order communicated verbally on 3rd April, 2006 and 9th January, 2006 respectively suddenly and most unceremoniously terminated S/Shri Ashok Saha and Subrata Mitra. The third workman, Shri Abdul Momin was not regularized in clerical cadre post, instead two persons junior to him, S/Shri Sumanata Mukherjee and Noor Alam were regularized. Thus termination of Shri Ashok Saha and Shri Subrata Mitra amounts to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act of 1947 for convenience). The bank in order to deprive these two persons any terminal benefit or retrenchment compensation did not issue any written order to them effecting their termination from employment. Their retrenchment has been effected without compliance of provisions of Section 25F of the Act which is void ab initio and as such non est in law. Consequently Shri Ashok Saha and Shri Subrata Mitra continued to remain service and employment of the bank on the same terms and conditions prevailing immediately preceding the date of such purported date of retrenchment. They are also entitled for full back wages. Shri Sumanta Mukherjee and Shri Nur Alaim were appointed in the clerical cadre of the bank on or about 30th March, 1998 and 2nd August, 1999 respectively subsequent to the appointment of Shri Ashok Saha and Shri Subrata Mitra. Shri Sumanta Mukherjee and Shri Noor Alaim have been retained and regularized by the bank in employment while the employment of Shri Ashok Saha and Shri Subrata Mitra were abruptly terminated which is violative of the provisions of Section 25G of the Act. Thus the concerned workmen have claimed their regularization in the clerical cadre post of the bank with effect from the date of their initial appointment or from the date when two persons junior to them were regularized.

3. Written statement has been filed by the bank challenging authority of the union to raise dispute on behalf of the concerned workmen, S/Shri Ashok Saha, Subrata Mitra and Abdul Momin. It is pleaded that the above persons were employed in the bank purely on casual capacity from time to time in order to fill up temporary vacancy caused due to absence, sickness or other reasons of permanent employees and have never completed continuous work of one year in terms of provisions of Section 25B of the Act. It has been further pleaded that the reference made by the Government is for absorption and the question of seniority while the statement claim of the union has raised the question of retrenchment. Therefore the reference is not sustainable because absorption, seniority and retrenchment are different connotation and cannot have the same meaning. When the concerned workmen for the first time got their scheduled work for the bank to substitute in place of permanent employees who either remained on leave or absented themselves for any other reason, had given undertaking for not to seek permanent employment from the bank vide letter of undertaking dated 11th March, 1994, 29th April, 2000 and 2nd May, 2000 respectively. The bank had issued a notice on 15th September, 2004 inviting applications for the post of Cashier-cum-Clerk, Sweeper and Messenger in which essential criteria of age limit was also mentioned. The age limit for making an application for the post of Cashier-cum-Clerk was 33 years. In response to above notice Shri Sumanta Mukherjee and Md. Noor Alam and one of the concerned workmen, namely, Shri Subrata Mitra submitted their applications for the respective posts. Apart from them, the other two concerned workmen were not able to submit their applications due to age limit. Above two applicants succeeded in their tests and subsequently they were appointed in their respective clerical cadre. However, the application of Shri Subrata Mitra was rejected on the ground of over age. Thereafter, with a *mala fide* intention the union has raised the industrial dispute on false and baseless grounds. The concerned workmen were not members of the union. It is further pleaded that the concerned workmen used to work casually in the bank and as such it was not possible for the bank to issue any written letter of appointment and maintain any daily attendance register. They also used to get the amount as daily wage in cash as they work as a substitute in place of permanent employees. They never worked 240 days continuously to acquire the status to claim employment. Provisions of retrenchment are not applicable in case of the concerned workmen.

4. The union filed a rejoinder stating therein that the appropriate government have referred the entire spectrum of disputed facts for adjudication, therefore, the reference is maintainable.

5. On behalf of the workmen Shri Ashok Saha has filed his examination-in-chief. He was partially cross-examined by the Bank. Thereafter none appeared for the bank to cross-examine him. Therefore, his cross-examination was closed and the witness was discharged. As nobody appeared for the bank, the case proceeded *ex parte* against the bank.

6. Though the case is proceeding *ex parte*, certain points have been raised regarding maintainability of reference, such as that the concerned workmen are not members of the union and the dispute has not been properly raised by the union. Therefore, it cannot be converted into an industrial dispute. Maintainability of the reference has also been raised by the bank in its written statement. As the above two points involves jurisdictional issue, it would be just and proper to deal with these two points first and thereafter, if necessitated the merit shall be discussed.

Individual dispute vs. industrial dispute :-

7. Though a dispute may initially be individual dispute, it may become industrial dispute, if it is espoused by a union. Question arises as to whether it is necessary for the concerned workman to be a member of the union for espousal

of the cause of the workman. In **Workmen v. Management of Dimakuchi Tea Estate**, AIR 1958 SC 353 it has been held by the Hon'ble Apex Court that it is not necessary for the dismissed workman to be a member of the union. The only condition for individual dispute turning into an industrial dispute is the necessity of a community of interest and not whether the concerned workman was or was not a member of the union at the time of his dismissal. In **Western India Match Co. Ltd. v. Western India Match Co. Workers Union & Others**, AIR 1970 SC 1205 the Hon'ble Court held that if it is necessitated that the concerned workman must be a member of the union at the time of his dismissal, the result would be that if at the relevant period of time there was no union in that particular industry, then the dismissal of such workman can never be an industrial dispute, though the other workmen have a community of interest in the matter of his dismissal. The Hon'ble Court further explained that this premise presupposes that dispute is an individual dispute and such a dispute can become an industrial dispute, if it is espoused by a union or a substantial section of workmen after the cause of dispute, i.e., dismissal has taken place.

8. In the present case, it has been contended by the authorized representative of the concerned workmen that the cause of the dismissed workmen was espoused by the union and there is no law that the concerned workmen must be member of the union. This fact has been specifically pleaded in paragraph 3 of the rejoinder of the union. It is true that the concerned workmen need not essentially be member of the union, it is sufficient if the workmen espousing the case have community of interest. But the concerned workmen have not pleaded either in their statement of claim or in affidavit-in-chief that the workmen espousing the cause have community of interest or that directly or substantially interested in the employment, non-employment or conditions of employment of the concerned workmen. Hence espousal is not competent to convert individual dispute in industrial dispute.

9. The authorized representative of the union relying on the **State Bank of India v. N. Sundara Mony & Others**, AIR 1976 SC 1111 and **H.D. Singh v. Reserve Bank of India & Others**, AIR 1986 SC 132 has contended that striking off the name of the workman for any reason whatsoever is clearly termination of his service and the dispute squarely comes within Section 2A of the Act of 1947. However, this argument is not tenable at all in view of the facts of the present case. It is material to note here that the dispute which was raised by the union and referred by the Government to this Tribunal is regarding seniority and absorption of the concerned workmen and not regarding their termination. Fact of termination of the concerned workmen has been developed by them by filing statement of claims subsequent to the reference of dispute by the Government. Hence the fact of espousal or application of Section 2A has to be looked into with reference to the dispute referred to this Tribunal which is regarding seniority and absorption. Therefore, Section 2A of the Act of 1947 has no application to the fact of the present case and the reference is resultantly bad for that reason.

Scope of reference:-

10. It has been pleaded by the bank that under Section 10(4) of the Act of 1947 the Industrial Tribunal has got no jurisdiction to travel beyond the terms of reference. The Tribunal was required to confine its adjudication to those points only which have been referred by the Government or any matter incidental to them. The issue not covered under the reference, cannot be adjudicated by the Industrial Tribunal.

11. In **Mukan Ltd. v. Mukan Ltd. Staff & Officers**, (2004) 10 SCC 460 the Hon'ble Apex Court has held that the Labour Court cannot travel beyond the terms of reference. Relevant portion of the judgment can be reproduced as under:-

"36. We, therefore, hold that the reference is limited to the dispute between the company and the workmen employed by them and that the Tribunal, being a creature of reference, cannot adjudicate matters not within the purview of the dispute actually referred to it by the order of reference."

12. In **Chhathoo Lal v. Management of Goramal Hariram Limited**, Manu/DE/9872/2006 the Hon'ble High Court at Delhi held that since the workman had not raised the contention that the contract between the management and the contractor was sham, Labour Court could not have gone into the question. The Hon'ble Court further held that the Labour Court is a creation of reference and therefore cannot go beyond the terms of reference. Relevant portion of the above judgment may be reproduced as under:-

"8. In the present case the workman had not raised any contention that the contract entered into between the contractor and the management was sham. In fact, the contention of the workman was that he was an employee of the respondent. The Labour Court could not have gone into the question whether the contract was sham or not because no such reference was made to the Labour Court. The reference made to the Labour Court was that whether the services of the petitioner was illegally terminated or not and the contention of the petitioner was that he was a direct employee of the respondent. I consider that the petitioner initially should have raised a proper dispute. He should have come up with clean hands and submitted that he was an employee of the contractor and contract should be declared as sham and camouflaged and he should be considered as an employee of the principal employer. He did not disclose this fact and taking a false plea stood in the way of referring a proper dispute to the Labour Court. It is settled law that the Labour Court is a creation of the reference and the Labour Court cannot go beyond the terms of reference, except that the question incidental to the dispute and thus, should to the jurisdiction of the Labour Court can be decided by the Labour Court while deciding the reference."

13. In the instant case, as it has already been seen that the reference pertains to question of seniority and absorption only. Hence any adjudication regarding termination of the concerned workmen would amount to travelling beyond the scope of reference. This Tribunal is creation of reference, hence can adjudicate only that question which has been

referred to it. On this ground also adjudication into the question of termination of the concerned workmen is beyond its jurisdiction.

14. In view of above discussion it is crystal clear that the reference on the question of seniority and absorption is bad for want of proper espousal and adjudication into the question raised by the union in the statement of claim regarding termination of the concerned workmen is beyond jurisdiction of the Tribunal.

15. The authorized representative of the union has also cited **K.C. Joshi v. Union of India & Ors.**, AIR 1985 SC 1046, **Punjab Land Development & Reclamation Corporation Ltd. v. Presiding Officer, Labour Court, Chandigarh**, (1990) 3 SCC 682, **Gujarat Agricultural University v. Rathod Labhu Bechar & Ors.**, Civil Appeal No. 691 of 2001 and **Management of MCD v. Prem Chand Gupta & Another**, Civil Appeal No. 7764 of 1997. But these cases cited are regarding compliance of provisions of Section 25F of the Act of 1947. As it has been seen that the espousal of the dispute by the union and adjudication by this Tribunal regarding termination of the concerned workmen are beyond the jurisdiction of this Tribunal, the question of application of the provisions of Section 25F of the Act of 1947 does not arise. Therefore, the concerned workmen are not entitled to any relief.

16. Award is passed accordingly.

Dated, Kolkata,

The 27th February, 2019

Justice RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 15 मार्च, 2019

का.आ. 420.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजया बैंक के प्रबंधनतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 39/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.03.2019 को प्राप्त हुआ था।

[सं. एल-12011/10/2014-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 15th March, 2019

S.O. 420.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* No 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Vijaya Bank and their workmen, received by the Central Government on 15.03.2019.

[No. L-12011/10/2014 - IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2, DWARKA COURTS COMPLEX : NEW DELHI

ID No. 39/2014

Vijaya Bank Workers' Organization,
C/o Vijaya Bank, Ram Nagar Branch,
Pahar Ganj, New Delhi 110055.

Represented by its Regional Secretary

... Workman/Claimant

Versus

The Management of Vijaya Bank,
3rd Floor, 17 Barakhamba Road,
New Delhi 110001.

Represented by its Regional Manager

... Management/Respondent

AWARD

This Award shall decide a reference which was made by the Appropriate Government vide its letter No. L-12011/10/2014-IR(B-II) dated 24.04.2014 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

'Whether the transfer of Shri Pradeep Sharma, Telephone operator by the Management of Viaya Bank from Regional Office Barakhamba Road branch is just, fair and legal ? What relief the workman concerned is entitled to ?'

2. Both parties were put to notice and the claimant Union filed its statement of claim through its Regional Secretary Shri M.K.Modi, with the averments that Shri Pradeep Sharma being a visually impaired person was appointed as a Telephone Operator cum clerk by the Management under PWD category. The said workman was a Regional Organizing Secretary of the claimant Union and in terms of the understanding between the Management and claimant Union, three regional office bearers are exempted from the purview of transfer. In May, 2013 the said workman was transferred by the Management in deviation of its transfer policy and pursuant thereto the workman gave a representation dated 31/5/2013 to the Management explaining his plight & condition with the request that he be retained at Regional Office, New Delhi but the said representation was not considered favourably. Thereafter the workman raised the dispute before the Conciliation officer but to no success. It is alleged that transfer of the said workman Shri Pradeep Sharma has been resorted to by the Management with a view to harass him as he being Regional Organizing Secretary of the claimant Union has been actively participating in the trade union activities and such a transfer is illegal and unjustified.

3. Management resisted the claim of the Claimant Union, by filing its written statement and took preliminary objections that the transfer of the workman Pradeep Sharma is in accordance with transfer policy of the Management and there is no malafide intention on the part of the Management in transferring the said workman. As a result of transfer of the workman, none of the conditions of service as enumerated in Section 9-A of the ID Act is violated. Allegations of the claimant Union regarding the action taken by the Management as a resort to harass the workman have been denied. Prayer has been made for dismissal of the claim petition.

4. On the pleadings of the parties, following issues were framed on 20/12/2016 :-

- 1) Whether transfer of Shri Pradeep Sharma, telephone operator by the Management of Vijaya Bank from Regional Office to Barakhamba Road Branch is just, fair and legal ? If so, its effect ?
- 2) What relief the workman is entitled to ?

5. Perusal of the record shows that number of opportunities were granted to the claimant Union to adduce evidence in support of its claim but it not only failed to lead any evidence but also stopped participating in the proceedings also from 30/3/2017 effectively. despite the fact that matter was adjourned time & again and ultimately vide order dated 1/10/2018 this Tribunal was constrained to reserve the matter for passing No Claim/Dispute Award.

7. In view of the fact that the claimant Union has failed to substantiate the averments made in the claim petition regarding illegal transfer of the workman Shri Pradeep Sharma or to rebut the stand of the Management that transfer of the workman Pradeep Sharma was in accordance with its transfer policy, with no malafide intention, this Tribunal is constrained to pass No Dispute Award in the matter. Since the matter has not been decided on merits, there will be no bar for the claimant to file afresh claim petition in accordance with law for adjudication of the controversy in issue or to seek any other relief to which he is otherwise entitled to. Award is passed accordingly.

Dated : 15.11.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 मार्च, 2019

का.आ. 421.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 53/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.03.2019 को प्राप्त हुआ था।

[सं. एल—12012/18/2011—आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 15th March, 2019

S.O. 421.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2011) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* No 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 15.03.2019.

[No. L-12012/18/2011-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1, DWARKA COURTS COMPLEX : NEW DELHI****ID No. 53/2011**

Shri Virendra Bahadur Singh,
S/o. Shri Surendra Pal Singh,
R/o. 315/20, Sector -2, Indira Nagar,
Lucknow (UP).

... Workman/Claimant

Versus

1) Managing Director,
Punjab National Bank
7, Bhikaji Cama Place, New Delhi.

2) Circle Officer,
Punjab National Bank
Circle Office, RD Section,
A-9, Yamuna Vihar,
Bulandshahar (UP).

... Management

AWARD

This Award shall decide a reference which was made under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act), by the Appropriate Government vide letter bearing No. L-12012/18/2011-IR(B-II) dated 19/7/2011, with following terms of reference :-

“Whether Shri Virender Bahadur Singh employed as Accountant is a workman ? Whether the termination of his services w.e.f. 12/12/2008 by the management of Punjab National Bank is legal and justified ? What relief he is entitled to ?”

2. Both the parties were put to notice and the claimant/workman filed his statement of claim with the averments that he was appointed as a clerk in the erstwhile New Bank of India vide appointment letter dated 6/11/1980 and he joined his service as such in December, 1980 and later on he was transferred to Sheikuhupura Branch, Distt Bulandshahar (UP) & there he was working as Accountant which post was only of Senior Assistant, without any administrative or supervisory authority. He was put under suspension vide letter dated 29/1/1992 by Regional Manager, Meerut. A chargesheet dated 17/3/1994 was issued against him by the Management on false and fabricated allegations of fraud and non adherence with Bank norms. The Management vide letter dated 4/8/1994 appointed Shri HN. Patwari, Manager as Enquiry Officer who held ex parte against him and submitted his report dated 12/5/1995. As soon as claimant came to know about the ex parte enquiry proceedings, he preferred a Writ before Hon'ble High Court of Allahabad & vide order dated 18/3/2008 Hon'ble High Court was pleased to set aside ex parte enquiry against the claimant and Management was directed to initiate/open fresh enquiry against him. The Management was also directed to pay subsistence allowance to the claimant. The Management appointed Shri LK Tiwari, Senior Manager as Enquiry Officer. The claimant participated in the proceedings and the enquiry officer submitted his report dated 13/9/2008 wherein charge No.1 was partially held to be proved and rest of the charges were not proved. Against the enquiry report, the claimant sent a detailed representation/explanation dated 5/11/2009 to the Disciplinary Authority but the Disciplinary Authority failed to consider his submissions and ultimately a major penalty of dismissal from service was imposed upon him by the Disciplinary Authority vide order dated 11/12/2008. The claimant preferred a Civil Writ Petition No.26448/2009 before Hon'ble High Court of Allahabad wherein the Management took a plea that claimant is workman under ID Act and accordingly the said Writ was decided with such directions. The claimant also filed appeal dated 18/1/2009 and supplementary appeal dated 30/1/2009 but the order dated 11/12/2008 was concurred by the Appellate Authority. It has been alleged that findings of the enquiry officer as well as order of dismissal by the Disciplinary Authority are based on conjectures, surmises and are based on assumptions. Even the Appellate Authority without applying its mind also erred in upholding the findings of the Enquiry Officer. Prayer has been made for setting aside the order dated 11/12/2008 of the Disciplinary Authority as well as order dated 12/3/2009 passed by Appellate Authority and for reinstatement of the workman/claimant with continuity in service alongwith back wages and other benefits attached to his services.

2. The claim petition has been resisted by the Management who filed written statement and took preliminary objections inter-alia that the claimant was lastly working as an Officer and as such was not a workman under ID Act. Enquiry proceedings were held in a just and fair manner and by following the principles of natural justice. It has been

alleged that during the period 1990-91 several frauds had come to light in the Sheikhpur Branch of the Bank where the claimant was working as Officer and the preliminary investigation revealed his involvement in the said fraudulent transactions in connivance with two other staff members of the Branch. A proper charge- sheet dated 17/3/94 was issued against the claimant and after conclusion of the enquiry proceedings, the Enquiry Officer submitted his report dated 13/9/2008 based on facts and evidence adduced on record. The Disciplinary authority after analyzing the evidence and findings of the Enquiry Officer as well as points raised by the claimant in his representation dated 5/11/2008 passed the impugned order dated 11/12/2008, thereby awarded punishment of dismissal of services. The claimant filed a writ petition which was dismissed by Hon'ble High Court of Allahabad vide its order dated 6/3/2009 observing that the Appellate authority of the Bank may consider & decide the appeal preferred by the claimant. Thereafter the Appellate Authority vide its order dated 12/3/2009 rejected the appeal of the claimant. It is alleged that the punishment imposed was commensurate with the gravity of the charges levelled and proved against the claimant. Prayer has been made for dismissal of the claim petition.

3. The claimant filed rejoinder wherein he denied the allegations as made in the written statement and reiterated the averments as made in the claim petition.

4. On the pleadings of the parties, my learned Predecessor had framed following issues on 7-1-2014 :-

1. Whether Shri Virender Bahadur Singh employed as Accountant is a workman ? If so, its effect ?
2. Whether the termination of his services w.e.f. 12.12.2008 by the Management of Punjab National Bank is legal and justified ? If so, its effect ?
3. Whether inquiry conducted against workman by Management is just and proper ? If so, its effect ?
4. Whether the Tribunal has jurisdiction to decide the reference ? If so, its effect ?
5. To what relief workman/claimant is entitled to ?

5. The claimant tendered his evidence by way of affidavit Ex.WW1/A) and relied on the documents Ex.WW1/1 to Ex.WW1/6, whereas the Management examined one Shri L.K. Tiwari, Asstt. General Manager, PNB, Circle Office, Rajendra Place, New Delhi as MW2 who tendered his affidavit Ex.MW1/A alongwith documents Ex.MW1/1 to Ex.MW1/10.

6. I have heard the Shri O.P.Sharma, A/R for the claimant and Shri Rajat Arora, A/R for the Management bank and have gone through the records carefully.

Issue No.1 & 4 :

7. Both these issues are being taken up together for the purpose of discussion and they can be conveniently disposed of. In its written statement, the Management has taken an objection that since the claimant was working as an Officer at the time when his services were terminated, he was not a "workman" as per the provisions of the Act and as such this Tribunal has no jurisdiction to entertain this claim petition. I may mention that during the course of arguments learned A/R for the Management did not press this issue seriously. Even otherwise, it is the case of the claimant that he was appointed as a clerk in the erstwhile New Bank of India and at the relevant time he was working as Accountant which post was only of Senior Assistant and that he had got no administrative or supervisory authority. It is well settled that in order to find out as to whether a person was performing the work of supervisory or managerial in nature, the dominant purpose of the employment of the person concerned should be taken into consideration and certain additional duties performed by him should be ignored while determining the status and character of the person. Since the objection regarding the status of the workman being employed as "Accountant"/Officer has been taken by the Management, as such onus to prove this fact is upon the Management. It was imperative for the management to adduce cogent evidence to prove the specific nature of duty regarding supervisory or managerial work of the claimant. Shri L.K. Tewari –sole witness examined by the Management did not utter any word in his affidavit Ex.MW1/A to suggest that the claimant while working as Accountant was vested with powers of administrative and supervisory nature. In the given facts and circumstances of the case, it can neither be held that the workman herein does not fall within the ambit and scope of the definition of "workman" as provided under Section 2(S) of the Act, nor it can be held that this Tribunal has no jurisdiction to decide the reference. Hence, these issues are decided against the Management.

Issue No. 3 :

This issue was treated as preliminary issue and has already been decided in favour of the Management, by my learned Predecessor vide order dated 18/4/2017.

Issue No.2 & 5 :

At the outset I may mention that fairness of the domestic enquiry conducted against the workman/claimant herein has been upheld by my learned Predecessor vide order dated 18/4/2017. It is fairly settled that the Disciplinary Authority is empowered to impose penalty upon the charged official qua his misconduct, on the basis of enquiry report, after affording personal hearing to the charged official. Needless to mention that the chargesheet was issued against the claimant on 17/3/1994 and the impugned order imposing major penalty of dismissal from service was imposed upon the claimant by the Disciplinary Authority vide order dated 11/12/2008. During the course of arguments, learned A/R for

the claimant submitted that charge No.1 was partially held to be proved, whereas rest of charges were held to be not proved by the Enquiry Officer but despite that the Disciplinary Authority imposed major penalty of dismissal from service of the claimant. He submitted that the impugned order is very harsh and disproportionate to the charges of misconduct proved against the claimant. He also submitted that since the claimant/workman has already crossed the age of his superannuation, a lenient view be taken against him.

10. Per-contra, learned A/R for the Management submitted that the Disciplinary Authority has awarded a reasonable punishment upon the workman keeping in view the irregularities and misconduct on his part and that there is no question of any interference by this Tribunal.

11. It is worthwhile to mention here that Section 11-A of the Act empowers this Tribunal to interfere with the quantum of punishment. Reference in this respect may be made to the decisions of Hon'ble Apex Court in the case of **Pepsu Road Transport Corporation Versus Rawel Singh, 2008 AIR (SCW) 2099**; of Punjab & Haryana High Court in the case/s of **Punjab National Bank Vs. The Presiding Officer, CGIT & another 2012 (2) SLR 631; Harnek Singh Versus State of Haryana & others 2010(3) SLR 276 and Joginder Lal Versus The Presiding Officer, Labour Court, Ambala & another 1996() SCT 436.**

12. There were allegations of misappropriation of funds against the workman. Perusal of the Enquiry report Ex.MW1/10 which runs into 27 pages shows that four different charges were leveled against the workman and gist of the first charge viz. charge 1(A) was that he received cash from Saving Fund account holders, made entries in the respective accounts in ledger sheets but did not account for the same in Bank's books and thereby defrauded the Bank and/or its customers. As per the enquiry report, total amount of various fraudulent transactions was to the tune of around Rs.25,000/- . There were also three other serious charges against the workman viz. making fraudulent entries in the cash book, manipulation of the records, forging the signatures/thumb impression of the accounts holders and fraudulent issuance of FDR for Rs.43,000/-. The Enquiry Officer in his detailed report has made remarks that **the charge & related Article-II, II and IV stand not proved in absence of supportive evidences**. While concurring with the findings of the Enquiry Officer, vide impugned order the Disciplinary Authority has awarded punishment of major penalty of "Dismissal from service which shall ordinarily be a disqualification for future employment" upon the workman. **The charges & related Article-II, II and IV against the workman have been held to be not proved by the Enquiry Officer, in absence of supportive evidences.** In the light of these findings given by the Enquiry Officer, this Tribunal is of the opinion that the quantum of punishment awarded to the workman/claimant by the Management in respect of his misconduct is disproportionate & excessively high and same is liable to be substituted. To my mind, the ends of justice would be met if punishment of "removal from service" without disqualification from future employment, is awarded against the workman, Award is passed accordingly.

Dated : 14.11.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 मार्च, 2019

का.आ. 422.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 43/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.03.2019 को प्राप्त हुआ था।

[सं. एल-12012/96/2011-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 15th March, 2019

S.O. 422.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2012) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* No 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 15.03.2019.

[No. L-12012/96/2011-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 43/2012**Date of Passing Award- 13th February, 2019****Between:**

Shri Vijay Kumar,
S/o. Late Sh. Mohan Lal,
R/o. B-532, Camp No. 4, Jawalapuri,
Nangloi,
Delhi-41

... Workman

Versus

The Manager,
Indian Bank, G-27, Community Centre,
Near PVR, Vikas Puri,
New Delhi- 18.

... Management

Appearances:

Workman in person Advocate : For the Workman

Shri Jasbir, Advocate : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Indian Bank, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/96/2011(IR(B-II) dated 04.01.2012 to this tribunal for adjudication to the following effect.

“Whether the action of management of Indian Bank, Vikaspuri Branch, New Delhi in terminating the services of Sh. Vijay Kumar S/o. Late Shri Mohan Lal w.e.f 10.05.2010 is justified or not? To what benefit will be given to the workman and from which date?”

The workman/claimant filed a claim statement stating that he was in the employment of the management from 14.05.1996 as a sweeper on a monthly salary of Rs. 5400/- . He was discharging his duty to the utmost satisfaction of his employer. During course of such employment the management had never given any appointment letter to him. Not only that, he was not getting appropriate wage though working for 12hours a day. Though he was a sweeper, the management was making him to work as a peon and daftari. The workman was often demanding fair wage and other service benefit including preparation of service record. Perhaps that annoyed the management and on 08.05.2010 when he reported for work the management did not allow him to enter the premises and thereby terminated his service without following the procedure established by law nevertheless the provision of section 25-F of the Industrial dispute act 1947. For a continuous period the workman went to the bank and requested the management for allowing him to work but he was never allowed. Thereafter the workman served a demand notice on the management through union, demanding reinstatement and back wages. The same was not replied to by the management. The claimant/workman then lodged a complaint before the labour department and in turn a Labour dispute was raised before the labour commissioner and the conciliation proceeding was initiated. The management participated in the said proceeding but the conciliation failed. The Appropriate Government then made a reference to this tribunal for adjudication of the dispute and decide the entitlement of the workman. The workman has further stated that since the date of termination he is unemployed and with great difficulty managing to maintain his family. He has also pleaded that there is vacancy for sweeper in the management. Thereby he has advanced a prayer for reinstatement with back wages from the alleged date of termination.

Being noticed the management appeared and filed written statement rebutting the stand of the workman. It has denied the relationship between the workman and the management as an employer and employee. The specific stand of the management is that the claimant was engaged by the management purely on casual, adhoc, daily wage basis. His engagement was never against a sanctioned or regular post. Moreover the respondent is a nationalized bank having its own rules for recruitment of the employees. The workman was never employed following the said procedure. Rather, his engagement was with wide gap on casual basis for cleaning work and he was never an appointed sweeper. His disengagement is not covered under the definition of industrial dispute. Moreover the bank had no vacant post of permanent sweeper at the relevant time when the workman was allegedly engaged. The management has also taken a plea that the regional office or head office makes appointment to Group D post when there is vacancy from among the person sponsored by the employment exchange after conducting interview. The engagement of the claimant was never

made following these procedures. It is the further stand of the management that the claimant was getting remuneration through voucher on cash payment basis for the work done and never getting monthly salary of 5400/- as claimed by him. Thereby the management has pleaded for dismissal of the claim petition.

The workman filed rejoinder to the written statement alleging that the contents made in the written statement are all false statement. It has been alleged in the rejoinder that the management is guilty of withholding relevant documents in its possession.

On this rival pleadings, this tribunal framed the issue as per the terms of the reference for adjudication. Thus, the issue which needs to be answered is

- I whether the termination of service of the claimant by the management is justified.
- II whether the workman is entitled to any benefit and if so from which date.

The workman examined himself as witness no. 1 and filed photocopies of some document which is marked in a series of WW1/1 to WW1/12. All these documents are photocopies and the management challenged the admissibility of the same. The documents are in the nature of some correspondence made by the Branch Manager of Indian Bank Vikaspuri Branch requesting the Zonal Office to arrange a permanent sweeper or regularize the engagement of this workman Shri Vijay Kumar. The documents also include the correspondence made from the zonal office to the branch manager of the Vikaspuri on 08.07.1997 containing and advice to stop engagement of this workman Vijay kumar forth with and arrange to engage 2 or 3 casual sweepers. The workman has also filed the photocopy of the several vouchers showing receipt of remuneration by him till the year 2010. During the pendency of this proceeding the workman had also filed an application u/s 11(3) praying the management to produce the original of the documents in respect of the photocopies filed. The said application was rejected since filed after closure of the evidence. But prior to that the workman had filed another application praying a direction to the management for production of document like his attendance register and payment register. In reply the management denied about existence of any such document and accordingly the petition was disposed off.

The management has examined one of its Managers as MW1. No document has been filed by the management.

FINDINGS

ISSUE No.1

For answering issue no. 1 it is necessary to give a finding about the alleged continuous engagement of the workman with the management. It is the specific stand of the workman that he was working as a sweeper for the management from 1996 to 2010 and no appointment letter or termination letter was given to him by the Bank.

At the outset of the argument the Ld. Counsel for the management submitted that the workman is claiming continuous service with the management and thus, heavy burden lies on him to prove that he was working continuously for the management. The workman since failed to discharge the burden the proceeding is bound to fail and to be answered in the favor of the management. To support his contention he placed reliance in the case of **Krishna Bhagyajala Nigam Ltd. vs. Mohammed Rafi reported in (2009)11 SCC Page 522**. In reply the Ld. A/R for the workman submitted that he was a low paid employee and at the lowest rung of the management. It is highly impossible on his part to get hold of the documents of the management. In his attempt he had asked the management to produce his relevant service record. But the management denied possession of the same which amounts to suppression of material facts. He also argued that oral evidence of the workman and the documents filed by him can be taken into consideration for adjudication of this aspect.

In his oral testimony the workman has admitted that no appointment letter was issued to him despite repeated demand. But he was working 12 hours a day w.e.f 14.05.1996 to 10.05.2010 i.e for the continuous period of 15 years. Whatever documents he could arrange have been filed in this proceeding. Ofcourse during cross-examination he had admitted that his engagement was neither pursuant to application submitted nor his name being sponsored by the employment exchange. Banking on this statement of the workman, argument was advanced by the management that alleged engagement of the claimant in the bank is highly improbable.

Though the management Bank in the written statement has taken a plea that the Bank being a Nationalized Bank has a procedure for a employment of Group-D employees by the Zonal office after conducting interview of the persons sponsored by the employment exchange, surprisingly no evidence or documents except the oral testimony of MW1 has been adduced by the management in this regard.

It is true that initial burden lies with the workman to prove his continuous service of the management and this has been held by the Hon'ble Apex Court in the case of Krishna Bhagyajala Nigam Ltd. referred supra. In this proceeding the workman who was a sweeper and at the lowest rung of the management, has filed some documents though photocopies to prove the same. The document marked as WW1/1, WW1/2 and WW1/3 and WW1/4 are old documents of 1996 and 1997 created during an undisputed point of time. These documents go to prove that in the year 1996 and 1997 the present claimant was working as a sweeper and in 1997 there was an instruction from the Zonal office to disengage him. The vouchers filed by the claimant shows receipt of payment by him from the bank in the year 2010. The bank denied possession of any document regarding his engagement though called for. Thus, considering the oral and documentary evidence adduced by the workman this tribunal comes to a conclusion that the workman was working with the bank from 1996 to 2010 though documents of continuous service has not been filed by him. Perhaps bank is in a better position to disprove the stand of the workman about his continuous engagement with the Bank. But it failed to disprove the same. It is a decided principle of law that a party in possession of best document is duty bound to produce the same for throwing

light on the point of controversy irrespective of the burden of proof. In this case the respondent bank has failed to discharge the burden or to disprove the stand of the workman proved through same documents prepared during an undisputed point of time, particularly on the basis of Exhibit WW1/3.

Now the question comes if the termination of the workman was illegally made by the management. On behalf of the management the witness stated and argument has been advanced that when there was no appointment, the provision of the section 25-F of the ID Act need not be followed. On the other hand the workman has taken stand that neither the appointment letter nor the termination letter was handed over to him. When the documents and oral evidence of the workman proves his engagement with the bank till 10.05.2010, and the management has not shown any evidence about compliance of 25-F or payment of terminatin compensation it is held that the engagement of the workman was terminated illegally without following the procedure of law. This issue is accordingly answered.

ISSUE No. 2

Now in view of the finding arrived for issue no. 1 it is to be seen what relief the wrokamm is entitle to.

The workman in his claim petition and oral testimony has claimed for reinstatement to service with back wages. There is absolutely no evidence that he was working against the sanctioned or permanent vacancy. It is admitted by the workman as well as the management that his engagement was on casual basis. Whereas the workman claims continuous engagement, the management has taken the stand about intermittent engagement on need basis. In the case of **Jagbir Singh vs. Haryana State Agriculture Mktg. Board reported in (2009) 15SCC 327** the Hon'ble Apex Court have held that “*whenever the termination of an employee is found to be illegal, the relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact.*” In the said judgment it has been further held that if the order of termination is found to be in violation of section 25-F and set aside, the award of reinstatement should not however be automatically passed. While drawing a line between the daily wager and permanent employee the Hon'ble Apex Court have held that the reinstatement with full back wages in a case of daily wager would not be proper.

While addressing a similar issue the Hon'be Apex Court in the case of **Bhavnagar Municipal Corporation vs. Jadeja Govubha Chhanubha, reported in (2014) 16SCC 130** and in the case **GDA vs. Ashok Kumar, reported in (2008) 4 SCC 261**, have held that “*Non payment of retrenchment compensation does not necessarily result in reinstatement of the workman. Were such termination is found to be illegal, compensation in lieu of reinstatement would be proper.*”

Keeping in view the principle decided in the cases referred supra by the Hon'ble Apex Court and the fact that the workman had worked on daily wage as a casual worker but not against a permanent vacancy, for 15 years it is held that the circumstances do not justify his reinstatement to service with full back wages. Rather Payment of Rs. 100,000/- as compensation for his long unemployment before the disengagement would serve the cause of justice in the circumstances. This issue is accordingly answered. Hence, ordered.

ORDER

The claim petition be and the same is allowed on contest. The management is directed to pay the compensation as per the order to the workman within 60 days from the date of publication award failing which the workman would be at liberty of realizing the same through process of law and on such event the management would be liable to pay interest on the said amount at the rate of 12% from the date of publication of award and till final payment is made.

Dictated & Corrected by me.

Smt. PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 15 मार्च, 2019

का.आ. 423.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 44/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.03.2019 को प्राप्त हुआ था।

[सं. एल-12012/5/2011-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 15th March, 2019

S.O. 423.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2011) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* No 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 15.03.2019.

[No. L-12012/5/2011-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

Present : Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour, Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 44/2011**Date of Passing Award- 30th January, 2019****Between:**

Shri Vipin Khanna, C-8/18,
Yamuna Vihar, Delhi

... Workman

Versus

The General Manager (P)
PNB, Rajendra Bhawan, Rajendra Place,
New Delhi.

... Management

Appearances:

Shri K.G. Mishra, Advocate : For the Workman

Shri Rajat Arora, Advocate : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between the employer in relation to the management of Punjab National Bank and its workman herein, as the claimant under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/5/2011-IR(B-II) dated 13.06.2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Punjab National Bank, New Delhi in compulsory retiring with superannuation benefits to Shri Vipin Kumar khanna, Ex-Head Cashier vide order dated 09/03/2009 is just, fair and legal? What relief the workman is entitled to?”

The claimant workman filed the claim statement stating therein that he had joined the Punjab National Bank and working as the head cashier at the Branch Office of the Bank, Sadar Bazaar Delhi. On 10.07.2006 he was placed under suspension and on 19.08.2006 a Tabular Performa containing alleged irregularities was served on him. On 6.10.2006 he gave reply to the same. On 22.12.2006 he was served with a charge sheet and criminal complaint was also lodged against him. Though police, after investigation did not file charge sheet, departmental enquiry was conducted by the management. The said departmental enquiry was conducted in gross violation of the principles of natural justice and procedure laid down for domestic enquiry of the bank employees. At the end of the enquiry the disciplinary authority imposed the punishment of compulsory retirement on the workman by order dated 09.03.2009. The appeal preferred by the workman was also dismissed. Thus, the workman raised industrial dispute before the Assistant Labour Commissioner New Delhi and conciliation proceeding was initiated. On failure of the conciliation proceeding the Appropriate Government made a reference to this tribunal for adjudication. In the claim petition the workman had prayed for setting aside the punishment imposed in departmental enquiry with reinstatement to service and back wages. The management entered appearance and filed written statement denying the stand of the workman.

On the rival pleading of the parties issues were framed and the Issue No. 1 regarding the fairness of the enquiry was taken up as a preliminary issue that issue was answered in favor of the workman and the enquiry was held vitiated for not following the established, procedure and principles of natural justice.

Thereafter, the matter suffered adjournment for evidence to be adduced on behalf of the management. The management had also filed the affidavit of the witness V.S Rajput on 25.01.2019. When the matter was listed for cross-examination of management witness, the workman filed a petition expressing his desire to withdraw the claim for the reasons recorded herein. The main ground for withdrawal as taken by the workman is that the Bank by its order dated 20.09.2018 has decided to grant the benefit of pension/family pension to its employees w.e.f 27.11.2009 in case the employee is compulsorily retired after that date.

The management did not raise any objection. As such this Tribunal by order dated 25.01.2019 allowed the claimant to withdraw the claim.

In view of the circumstances there exist no dispute between the claimant and the management for adjudication and the reference is accordingly answered as no claim advanced by the workman.

This reference is accordingly answered.

Smt. PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 15 मार्च, 2019

का.आ. 424.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 72/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.03.2019 को प्राप्त हुआ था।

[सं. एल-12011/31/2013-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 15th March, 2019

S.O. 424.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* No 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 15.03.2019.

[No. L-12011/31/2013-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present : Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 72/2013

Date of Passing Award- 5th February, 2019

Between:

General Secretary,
Punjab National Bank Workers Union,
125, Ashok Vihar, Salawala,
Dehradun.

... Workman

Versus

1. Manager,
Punjab National Bank,
Ganna Samiti Dehradun,
2. Chief Manager (HRD)
Punjab National Bank,
Regional Office,
Paltan Bazar,
Dehradun.

... Managements

Appearances:

None for the workman Advocate

: For the Workman

Shri Akash Sherawat, Advocate

: For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Punjab National Bank, Regional Office, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12011/31/2013(IR(B-II) dated 28.05.2013 to this tribunal for adjudication to the following effect.

“Whether the action of management of Punjab National Bank in not regularizing the services of Smt. Vimlesh, part time sweeper is justified? What relief the workman is entitled to?”

The workman in the claim statement filed through the General Secretary Punjab National Bank workers Union has stated that from 14th June 1981 to 20th April 1984 and thereafter from 4th November, 1989 to 31st October, 1991 she had worked as a temporary sweeper with the management. Again since February 2009, she is also working as a temporary sweeper in the PNB Subash Road Branch Dehradun. Though the workman is working as a part time sweeper her engagement is against a permanent post and she has already worked for 240 days in a calendar year for the management. The workman had espoused a dispute with the management through the union for regularization of her job. As no action was taken by the management and since the workman is entitled to get the scale as per the proportion decided in bipartite agreement made on 2nd June 2005 the management became annoyed for her demand and threatened to end her engagement. Hence the workman through the PNB workers union raised a dispute before the Assistant Labour Commissioner Dehradun. Conciliation proceeding was taken up but the same failed. The Appropriate Government thereafter referred the dispute to this tribunal for adjudication.

The notice of the dispute being served on the management it filed the written statement denying the stand taken by the workman. The specific stand of the management is that the workman Smt. Vimlesh was allowed to work in different PNB branches of Dehradun on leave gap arrangement to sweep the branch premises. Her engagement was need based and the daily wage as notified by the government was being paid to her. The disengagement does not constitute retrenchment and the need based part time sweeper cannot be made regular. Moreover, the workman has crossed the age limit for employment. While denying the claim of the workman that she has worked for more than 240 days and thereby entitled to be regularized, the management pleaded for dismissal of the claim.

On these rival pleadings the following issues were framed to be answered.

ISSUES

1. Whether the action of the management of PNB in not regularizing the service of the Smt. Vimlesh, part time sweeper is justified, if so its effect.
2. To what relief the workman is entitled to.

FINDINGS

When the matter was adjourned for hearing and recording of the evidence of the workman, she failed to produce any oral or documentary evidence. After several opportunities when the matter was posted as a last chance for workman evidence she submitted her evidence in form of affidavit, sent to the tribunal by post. But she did not come forward to tender the evidence or face the cross-examination. Thus, this tribunal by order dated 12.01.2015 directed the workman to serve the copy of the affidavit evidence on the management and to remain present in the court to face the cross-examination. But on the adjourned date and subsequent dates she did not appear as a result of which by order dated 20th September, 2018 the evidence of the workman was closed and the management was called upon to adduce evidence. On 30.11.2018 management without adducing evidence closed the case.

It is the rule of adjudication that a person intending adjudication of his grievance shall substantiate the same by adducing oral or documentary evidence which shall be rebutted by the opponent. But here is a case was the workman though filed the claim statement and submitted the affidavit by post, did not come forward to prove the claim. The affidavit unless tendered by the deponent in the court and unless the said deponent is cross-examined the affidavit cannot be termed as evidence. Hence, in this case the tribunal has no second opinion than that the claimant has failed to substantiate the claim by oral or documentary evidence and for that reason the claim is liable to fail. Hence, ordered.

ORDER

The claim petition be and the same is dismissed with a no claim award and the reference is answered accordingly.

Smt. PRANITA MOHANTY, Presiding Officer